TEXAS REGISTER

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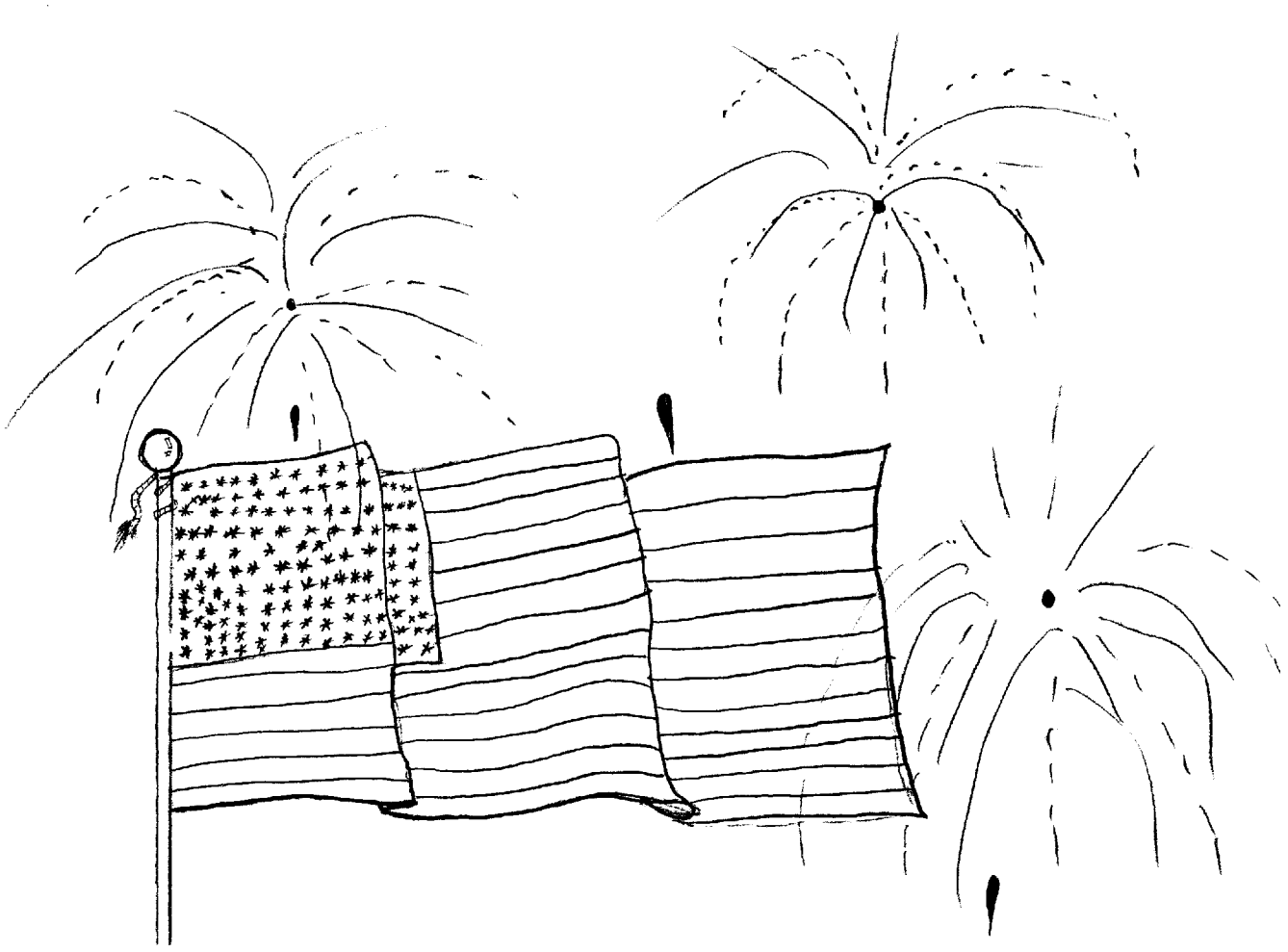

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0352-GA

Requestor:

The Honorable Tim Curry

Tarrant County Criminal District Attorney

Justice Center

401 West Belknap

Fort Worth, Texas 76196-0201

Re: Pretrial criminal release practices in counties subject to chapter 1704 of the Texas Occupations Code (RQ-0352-GA)

Briefs requested by July 29, 2005

RQ-0353-GA

Requestor:

The Honorable Suzanna Gratia Hupp

Chair, Committee on Human Services

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Standards to be applied in conducting examinations by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (RQ-0353-GA)

Briefs requested by July 29, 2005

RQ-0354-GA

Requestor:

The Honorable Mike Stafford

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Whether a commissioners court may approve a claim for payment on the basis of quantum meruit if the vendor did not have an enforceable contract with the county: Reconsideration of Attorney General Opinion GA-0247 (2004) (RQ-0354-GA)

Briefs requested by July 30, 2005

RQ-0355-GA

Requestor:

Ms. Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

333 Guadalupe Street, Suite 3-600

Austin, Texas 78701-3943

Re: Whether certain provisions of Senate Bill 410, enacted by the regular session of the 79th Legislature, which permits the State Board of Pharmacy to authorize Canadian pharmacies to import prescription drugs, is preempted by federal law (RQ-0355-GA)

Briefs requested by July 30, 2005

RQ-0356-GA

Requestor:

Honorable Joe Black

Harrison County Criminal District Attorney

Post Office Box 776

Marshall, Texas 75671-0776

Re: Criteria for determining what constitutes a newspaper of general circulation for purposes of section 2051.044, Government Code (RQ-0356-GA)

Briefs requested by July 30, 2005

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200502745
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: July 6, 2005

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.18

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Department of Information Resources (department) proposes to repeal 1 TAC §201.18, Purchases of Commodity Software Items, because it will be replaced by new rule chapter 1 TAC Chapter 212, Purchases of Commodity Items. The Department intends to publish for public comment Chapter 212 by separate action. The repeal is proposed pursuant to §2157.068(f), Government Code, as amended by H.B. No. 1516, 79th Legislature, which authorizes the department to adopt rules regulating the purchase by a state agency of commodity items, and §2054.052(a), Government Code, the department's general rulemaking authority.

Mr. Brian S. Rawson, Director of the Service Delivery Division for the department, has determined that there will be no fiscal implications for state or local government if 1 TAC §201.18 is repealed. The public will benefit by the repeal of unnecessary regulations.

Mr. Rawson believes there will be no different effect on small businesses than there is on large businesses and that there is no additional anticipated economic cost to persons if the rule is repealed.

Comments on the proposed repeal of 1 TAC §201.18 may be submitted to Cynthia Kreider, Contracts Attorney, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to cynthia.kreider@dir.state.tx.us no later than 5:00 p.m. CST, within 30 days after publication.

The repeal is proposed under §2157.068(f), Texas Government Code, as amended by H.B. No. 1516, 79th Legislature and §2054.052(a), Government Code.

Texas Government Code, Chapter 2157 is affected by the proposed repeal.

§201.18. Purchases of Commodity Software Items.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2005.

TRD-200502685
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: August 14, 2005
For further information, please call: (512) 936-6448

♦ ♦ ♦

CHAPTER 210. TEXASONLINE

1 TAC §210.1

The Department of Information Resources (department) proposes to publish for public comment the amendment of 1 TAC §210.1, relating to TexasOnline definitions. The department proposes to amend the rule to delete the definitions of authority and division and to delete the definition of an occupational license.

The changes to the rule are authorized by §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act. Changes to the definitions are proposed due to legislation enacted by the 79th Legislature in House Bill 2048, which transferred the responsibilities of the TexasOnline Authority to the department and House Bill 2593, which repealed references to the TexasOnline Division.

Brian Rawson, Director of Service Delivery for the department, has determined that there will be no fiscal implications for state or local government if the amendment proposed to §210.1 is adopted. The public will benefit by the adoption.

Mr. Rawson believes there will be no different effect on small businesses than there is on large businesses.

Comments on the proposed amendment of 1 TAC §210.1 may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days after publication.

The amendment is proposed under §2054.052(a), Texas Government Code.

Chapter 2054, Subchapter I, Texas Government Code, is affected by the proposed amendment.

§210.1. TexasOnline Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

~~[(1) Authority--the TexasOnline Authority created in Subchapter I, Chapter 2054, Texas Government Code.]~~

(1) [~~(2)~~] Board--the governing board of the Department of Information Resources.

(2) [~~(3)~~] Department--the Department of Information Resources.

~~[(4) Division--the TexasOnline division created by the department pursuant to §2054.264, Texas Government Code.]~~

(3) [~~(5)~~] License holder--individuals for whom and entities for which a profile system is required to be or may be established by state agency licensing entities.

(4) [~~(6)~~] Licensing entity--a department, commission, board, office or other agency of the state or a political subdivision of the state that issues an occupational license.

(5) Occupational license--a license, certificate, registration, permit, or other form of authorization, including a renewal of the authorization, that a person must obtain to practice or engage in a particular business, occupation, or profession; or a facility must obtain before a particular business, occupation, or profession is practiced or engaged in within the facility.

~~[(7) Occupational license--a license, certificate, registration or other form of authorization that a person must obtain to practice or engage in a particular business, occupation or profession.]~~

(6) [~~(8)~~] Profile system--an electronic system established by a licensing entity that is required by §2054.2606(a), Texas Government Code, or opts pursuant to §2054.2602, Texas Government Code, to establish an electronic system containing at least the licensee information prescribed by §2054.2606(c), Texas Government Code.

(7) [~~(9)~~] Profiling licensing entities--the state agencies listed in §2054.2606(a) and licensing entities that opt to provide a profile system pursuant to §2054.2606(b).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2005.

TRD-200502683
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: August 14, 2005
For further information, please call: (512) 936-6448

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1 TAC §210.2

The Department of Information Resources (department) proposes to publish for public comment the amendment of 1 TAC §210.2, relating to TexasOnline license holder profile fees. The department proposes to amend the rule to delete an unnecessary date, cover issuance of licenses in addition to the renewal of licenses through TexasOnline, delete the requirement in subsection (b) that state agency licensing entities that collect the cost of the profile system from licensees begin collecting the fees as soon as reasonably possible, and to authorize state agency licensing entities that opt to establish an online license holder profile system to cover the cost of the online service from licensees or from money otherwise available to the licensing entities.

The changes to the rule are authorized by §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act. The proposed deletion of the requirement that licensing entities begin collecting the fees from licensees as soon as reasonably possible is required because of §6 of House Bill 2048 and §3 of House Bill 2593, enacted by the 79th Legislature. These sections amend §2054.252(e), Government Code, to prohibit the department from charging subscription fees until the service for which the fee is charged is available on the Internet.

Brian Rawson, Director of Service Delivery for the department, has determined that there will be no fiscal implications for state or local government if the amendment proposed to §210.2 is adopted. The public will benefit from greater clarity of the rule if the amendment is adopted.

Mr. Rawson believes there will be no different effect on small businesses than there is on large businesses if the amendment is adopted.

Comments on the proposed amendment of 1 TAC §210.2 may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days after publication.

The amendment is proposed under §2054.052(a), Texas Government Code.

Chapter 2054, §2054.252 and §2054.2606, Texas Government Code, are affected by the proposed amendment.

§210.2. TexasOnline License Holder Profile Fees.

(a) Each licensing entity identified in §2054.2606(a), Government Code that is required to establish a license holder profile system shall[~~, by January 1, 2002,~~] collect five dollars annually from license holders listed in §2054.2606(a), Government Code that are applying for an initial license or are renewing an existing license [~~renewing a license~~]. The five dollar fee [~~dollars per license holder renewal~~] may be collected through increasing the license issuance and renewal fees by five dollars per license holder, by the licensing entity covering the fee [~~five dollars per license holder renewal~~] from other revenues rather than [~~by~~] increasing license issuance and renewal fees, or by a combination of increasing license issuance and renewal fees by less than five dollars per license holder and covering a portion of the five dollars per license holder from other revenues of the licensing entity. The money shall be transferred from the licensing entity to the department to cover the costs of providing the license holder profile system pursuant to guidelines established by the Office of the Comptroller of Public Accounts.

(b) Each state agency licensing entity that opts to establish a license holder profile system pursuant to §2054.2606(b), Government Code, shall collect five dollars annually per license issuance or renewal fee payable by each license holder about whom or which information is available through the profile system. The five dollar fee may be collected through increasing the license issuance and renewal fees by five dollars per license holder, by the licensing entity covering the fee from other revenues rather than by increasing license issuance and renewal fees, or by a combination of increasing license issuance and renewal fees by less than five dollars per license holder and covering a portion

of the five dollars per license holder from other revenues of the licensing entity [per year license renewal fee increases shall begin being collected by the licensing entity from affected license holders as soon as reasonably possible after the licensing entity determines to provide the license holder profile system].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2005.

TRD-200502684
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: August 14, 2005
For further information, please call: (512) 936-6448

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CHAPTER 212. PURCHASES OF COMMODITY ITEMS

The Department of Information Resources (department) proposes to publish for public comment 1 TAC Chapter 212, §§212.1, 212.10 - 212.12, and 212.20 - 212.23, in its entirety, as the new rules necessary to implement Section 1.08, H.B. 1516, 79th Legislature, which amends §2157.068, Texas Government Code. This act of the 79th Legislature has become law, but has not yet taken effect. Currently, §2157.068, Texas Government Code, limits state agency purchases of commodity items to software. The legislative amendment expands the state agency purchase of commodity items to also include hardware or technology services. The department intends to publish repeal of existing Software Commodity Rule 201.18 by separate action. In new Chapter 212, there are three subchapters. Subchapter A, §212.1 is a definition section. Subchapter B, §§212.10 - 212.12 govern required purchases and the establishment and maintenance of a list of the commodity items. Subchapter C, §§212.20 - 212.23 establish a commodity purchase rule exemption application and approval process. The department is cooperating with other state agencies in the development of 1 TAC Chapter 212. These rules are promulgated to implement Section 1.08 of H.B. 1516, 79th Legislature, which amends §2157.068, Government Code, effective September 1, 2005, and in subsection (f) of §2157.068, Government Code, authorizes adoption of rules to regulate commodity purchases by state agencies. Further, the department is promulgating these rules to implement §2001.006(b), Texas Government Code, which authorizes rulemaking activities for legislation that has become law but is not yet in effect.

Mr. Brian S. Rawson, Director of the Service Delivery Division for the department, has determined that there will be no fiscal implications for state or local government if the rules are adopted. The public will benefit by the adoption.

Mr. Rawson believes there will be no different effect on small businesses than there is on large businesses and that there is no additional anticipated economic cost to persons if the rules are adopted.

Comments on the proposed adoption of 1 TAC Chapter 212, §§212.1, 212.10 - 212.12, and 212.20 - 212.23, may be submitted to Cynthia Kreider, Contracts Attorney, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to cynthia.kreider@dir.state.tx.us no later than 5:00 p.m. CST, within 30 days after publication.

SUBCHAPTER A. DEFINITIONS

1 TAC §212.1

The new rule is proposed under §2157.068(f), Texas Government Code, as amended in Section 1.08, H.B. No. 1516, 79th Legislature, effective September 1, 2005, and §2001.006 (b), Texas Government Code, which authorizes necessary rulemaking actions for legislation that has become law but has not yet taken effect.

§212.1. Commodity Items Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commodity items--commercially available Software, Hardware and Technology Services that are generally available to businesses or the public and for which the department determines that a reasonable demand exists in two or more state agencies.

(2) Software--commercially available programs that operate hardware. The term includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements.

(3) Hardware--the physical technology used to process, manage, store, transmit, receive or deliver information. The term does not include software.

(4) Technology services--all the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. The term includes seat management, staffing augmentation, training, maintenance and subscription services. The term does not include telecommunications services.

(5) Seat management--services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary Hardware, Software and Technology Services.

(6) Purchase--to obtain ownership, any rights with respect to the use, transfer of ownership, or delivery of commodity items through acquisition, lease or any other method.

(7) State agency--a department, commission, board, office, council, authority or other agency in the executive branch or judicial branch of state government, that is created by the constitution or a statute of the state. The term does not include institutions of higher education, as defined in §61.003, Education Code.

(8) Board--the governing board of the Department of Information Resources.

(9) Director--the Executive Director of the Department of Information Resources.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2005.

TRD-200502714

Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: August 14, 2005
For further information, please call: (512) 936-6448

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SUBCHAPTER B. REQUIRED PURCHASES

1 TAC §§212.10 - 212.12

The new rules are proposed under §2157.068(f), Texas Government Code.

§212.10. Scope of Requirement.

Each state agency, excluding institutions of higher education, must purchase any commodity items that are contained on the list described in Rule 212.11 in accordance with a contract developed by the department, unless the agency first obtains an exemption from this requirement under Subchapter C of this Chapter or obtains express prior approval from the Legislative Budget Board for the expenditure necessary for the purchase.

§212.11. List of Commodity Items.

The department shall compile and maintain a list of commodity items available for purchase through the department. The department shall make the list available electronically via the world wide web at the following address: http://www.dir.state.tx.us.

§212.12. Emerging Technologies.

The board finds that information technology innovations occur at such a rapid pace that it hereby instructs the director to implement guidelines and update the commodity items list to apply to emerging information technologies as they become available in the marketplace.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2005.

TRD-200502715
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: August 14, 2005
For further information, please call: (512) 936-6448

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SUBCHAPTER C. EXEMPTIONS

1 TAC §§212.20 - 212.23

The new rules are proposed under §2157.068(f), Texas Government Code.

§212.20. Written Request and Approval Process.

(a) A state agency may submit a written request to the department for an exemption from the commodity items purchasing requirement described in Subchapter B of this Chapter. The state agency shall not take any action on the contemplated purchase until the request for exemption is either approved or denied by the department.

(b) A request for an exemption must be in writing and include sufficient documentation to support the validity of the request. The department may request additional information in order to determine whether the proposed purchase is in the best interest of the state.

(c) Upon review of a written request for exemption, the department shall issue, in writing, either an approval or denial. A written approval shall include all pertinent terms and conditions of the exemption, including but not limited to, the dollar limit, expiration date, the quantity, list of specific commodity items, and any other conditions related to the proposed purchase. A written denial shall include the basis for the denial.

(d) If the department has not issued a written denial of the exemption request within thirty (30) calendar days following the date of its receipt of the request, the request for the exemption shall be deemed to have been approved for an amount equal to the total dollar amount of the proposed purchase or for the period of time described in the exemption request.

§212.21. Emergency Requests.

(a) In the event of an emergency purchase exemption request from a state agency, the department shall issue a written approval or denial of an exemption request within a maximum of three (3) business days of receipt of the emergency purchase exemption request.

(b) The request for exemption under an emergency situation must include a statement from the head of the requesting state agency describing the emergency and reasons for expedited review by the department.

(c) If the department has not issued a written denial of the emergency purchase exemption request within three (3) business days following the date of its receipt of the request, the emergency request for the exemption shall be deemed to have been approved for an amount equal to the total dollar amount of the proposed purchase or for the period of time described in the emergency exemption request.

§212.22. Blanket Exemptions.

The department may determine that under certain circumstances it is reasonable to grant a blanket exemption to state agencies from the commodity items purchasing requirements described in Subchapter B of this Chapter.

§212.23. Instructions for Requests.

The department shall make available electronically via the world wide web at the address listed in Rule §212.11 the:

(1) instructions for state agency submission of a written request for an exemption;

(2) requirements related to any blanket exemption granted by the department; and

(3) procedures for evaluating a state agency's written request for an exemption.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2005.

TRD-200502716
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: August 14, 2005
For further information, please call: (512) 936-6448

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL
SUBCHAPTER B. QUARANTINE REQUIREMENTS

4 TAC §20.12

The Texas Department of Agriculture (the department) proposes an amendment to §20.12, concerning a suppressed area under the department's cotton pest control program. The amendment is proposed to add the Panhandle Boll Weevil Eradication Zone (the Panhandle Zone) to the list of suppressed areas in §20.12.

The boll weevil eradication program in Texas was initiated in 1994 in an effort to rid the state of the boll weevil. Once a zone has achieved suppressed status, the zone can become re-infested with boll weevil from outside areas. Elimination of boll weevil re-infestations can be expensive. In areas of the southeastern United States, the control to stop re-infestations ranged from $20,000 to over one million dollars, with an average cost of $125,000 per outbreak. The designation of a zone as suppressed invokes quarantine restrictions on the movement of regulated articles from a quarantined area into a restricted area; this helps protect the zone from boll weevil re-infestation.

In accordance with §20.12, the Texas Boll Weevil Eradication Foundation (the foundation) recommended that the department declare the Panhandle Zone as suppressed. The foundation provided scientific documentation acceptable to the department, which indicates that movement of regulated articles into this zone presents a threat to the success of boll weevil eradication. The data provided indicates that boll weevil numbers for the 2004 cotton crop year were below the requirement of an average of 0.025 boll weevils per trap per week. Consequently, the Commissioner of Agriculture declared the Panhandle Zone to be suppressed on June 14, 2005.

Dr. Robert Crocker, Coordinator for Pest Management Programs, has determined that for the first five-year period the proposed amendment is in effect, there is no anticipated fiscal impact on state or local governments as a result of administration and enforcement of the amended section.

Dr. Crocker also has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering and enforcing the proposed amendment is that the risk of artificial re-infestation of a restricted area by boll weevils will be minimized, thereby protecting the investment that cotton producers and the State of Texas have made to eradicate the pest. Once the boll weevil is reduced to low levels or eradicated from cotton producing areas of the state, fewer insecticide applications should be necessary to produce high quality cotton. In other eradicated areas of the United States, it is estimated that growers are saving an average of $36 per acre in reduced pesticide applications and earning an additional $42 per acre from increased cotton yield. Preventing re-infestation by boll weevils in restricted areas may enable Texas cotton producers to achieve similar results.

There will be a cost to some individuals, micro-businesses and small businesses including cotton producers, transporters, ginners and others directly involved in cotton production. There will be a cost incurred for cleaning and/or treating equipment, such as cotton pickers, cotton strippers, boll buggies, and module trucks, used for harvesting or transporting cotton when moved into or through restricted areas. There also will be a cost incurred for cleaning and/or treating equipment used in stalk destruction, such as tractors, shredders, plows, and disks, when moved into or through restricted areas. Cleaning involves the physical removal of hostable material through methods such as removal by hand, high-pressure air cleaning, or high-pressure washing. Treatment of equipment may involve fumigation of regulated articles as prescribed by the department. Costs associated with cleaning or treating equipment will vary depending upon the cleaning or treatment method used, the cleanliness of the equipment, the capabilities of the grower, and the type of equipment being cleaned or treated. Because of the wide range of variables involved in cleaning and treating equipment, a cost to affected persons cannot be determined at this time. There also may be costs associated with implementing a protection plan, if mitigating measures are required to safeguard a restricted area from re-infestation by boll weevil. A protection plan is defined as a plan developed for the purpose of mitigating, with the goal of preventing, boll weevil infestation and establishment in an area. Mitigating measures will vary depending upon factors such as the location selected, the type of equipment being used, and the associated quarantined article. Measures may include, but are not limited to, the following: approved insecticide field treatment of cotton and cotton products prior to delivery to an area or a gin; requirements for moving, handling, storage and treatment or use of approved insecticide applications to regulated articles; or the monitoring of boll weevils at a given site. Costs associated with implementing a protection plan will vary due to the wide range of mitigating measures possible. In some circumstances, the use of current practices or equipment by a producer, transporter, ginner, or other responsible parties may be approved in the protection plan, thereby minimizing costs to those affected by the proposed amendment. Because each plan may be unique and situation specific, costs associated with implementing a protection plan cannot be determined at this time.

Comments on the proposal may be submitted in writing to Dr. Robert Crocker, Coordinator for Pest Management and Citrus Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

The amendment to §20.12 is proposed in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; and §74.122, which provides the department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and movement of regulated articles into and out of a quarantined area.

The code that is affected by the proposal is Texas Agriculture Code, Chapter 74, Subchapters A and D.

§20.12. Suppressed Areas.

(a) (No change.)

(b) The Northwest Plains (NWP), Northern High Plains (NHP), Northern Rolling Plains (NRP), Southern High Plains/Caprock

(SHP/C), Western High Plains (WHP), Permian Basin (PB), [~~and~~] El Paso/Trans Pecos (EP/TP), and the Panhandle Boll Weevil Eradication Zones, as defined in the Texas Agriculture Code, §74.1021 and Texas Administrative Code §§3.110, 3.111, 3.112, [~~and~~] 3.115 and 3.118 have been declared as suppressed by the commissioner.

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 30, 2005.

TRD-200502701
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 14, 2005
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.9

The Texas Alcoholic Beverage Commission proposes new §33.9, governing the service fees to be charged for on-line internet transactions with the commission.

Lou Bright, General Counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal impact on state or local government as a result of adopting this rule. The rule imposes a small fee for users of on-line services, but does not mandate such use or impose any fee on non-users. Therefore, there is no anticipated fiscal impact on small businesses.

Mr. Bright has also determined that for the first five years the rule is in effect the public will benefit because of the increased efficiencies offered by on-line licensing transactions.

Comments may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127.

The new rule is proposed under the authority of §5.31 of the Texas Alcoholic Beverage Code which authorizes the commission to prescribe and publish such rules as are necessary to carry out the provisions of the code.

Cross Reference: Section 5.55 of the Alcoholic Beverage Code is affected by this rule.

§33.9. Service Fees for On-Line Transaction and Credit Card Fees.

(a) This rule relates to §5.55 of the Alcoholic Beverage Code.

(b) A service fee of $0.50 shall be assessed for each on-line transaction.

(c) An additional fee of 2.25% of the total transaction amount shall be assessed for transactions paid by credit card.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 28, 2005.

TRD-200502652
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: August 14, 2005
For further information, please call: (512) 206-3204

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§101.1, 101.201, 101.211, and 101.221 - 101.223.

These amendments are being proposed as revisions to the Texas state implementation plan (SIP) that will be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The rules concerning emissions events and maintenance, startup, and shutdown activities were required by House Bill (HB) 2912, §5.01 and §18.14, 77th Legislature, 2001 and HB 2129, §1, 79th Legislature, 2005. Division 3 of the rule was amended in December 2003, and one of the amendments was inclusion of an expiration date of June 30, 2005, for §§101.221 - 101.223, in anticipation that these rules might require further consideration and revisions. The commission proposed a revision of Division 3 in March 2005, to extend the expiration date of June 30, 2005, to January 15, 2006, unless the commission submitted a revised version of §§101.221 - 101.223 to the EPA for review and approval into the SIP. Upon submittal of the revisions to the EPA, these sections would expire on June 30, 2006. This rulemaking action would remove the expiration clause. It would also modify and add definitions and would revise the notification and reporting requirements, and demonstration criteria. It would also provide for an affirmative defense for certain emissions from scheduled maintenance, startup, and shutdown activities. The commission also proposes to add the definition "Regulated entity" to incorporate statutory requirements of HB 2129.

In development of this proposed rulemaking, the commission sought comment from stakeholders at meetings held between March 4, 2005, and April 1, 2005. Numerous oral comments were received at seven stakeholder meetings and written comments were accepted through April 6, 2005. All comments were considered and evaluated by commission staff. These proposed revisions would implement many of the concepts from the comments received. Some comments are best able to be addressed through operational changes and currently many of these changes are underway. For example, the agency is

currently modifying the electronic reporting system to implement several changes including allowing for a single incident report for emissions events covering multiple facilities. Other revisions were suggested that are beyond the scope of the commission's authority and have not been proposed.

SECTION BY SECTION DISCUSSION

General Administrative Rule Language Changes

The commission proposes to change the word "which" to "that" and the word "shall" to "must" in numerous locations in the rule language to conform to the drafting standard in the *Texas Legislative Council Drafting Manual*, November 2004.

The commission proposes to spell out acronyms the first time they are used in a section and to delete acronyms that are only used once in a section. The commission also proposes to replace the words "site" or "facility" with "regulated entity" in numerous sections to comply with HB 2129. Additionally, some text is revised to recognize that emissions events would now be contained within one report instead of a report for each facility.

SUBCHAPTER A, DEFINITIONS

The proposed amendment to §101.1, concerning Definitions, adds the definitions of "Boiler," "Combustion turbines," and "Excess opacity event." The definition of "Boiler" in 30 TAC Chapter 117 is duplicated in these general definitions since the term is used in multiple state air regulations. The definition of "Stationary gas turbine" is also duplicated in the general definitions and renamed in Chapter 101 as "Combustion turbine" since the term is also used in multiple state air regulations. The term "Excess opacity event" is proposed to be defined so that it is clear what is meant by an excess opacity event.

Proposed §101.1(25), renumbered as §101.1(27), would amend the definition of "Emissions event" to further define that any upset event or unscheduled maintenance, startup, or shutdown activity from a common cause is considered one event. Further, the unauthorized emissions from the event can also result from one or multiple emission points at a regulated entity.

Proposed §101.1(68), renumbered as §101.1(71), would amend the definition of "Non-reportable emissions event" to no longer simply state that non-reportable emissions events are those that are not reportable emissions events, but to more clearly define them as any emissions event in a 24-hour period that does not result in an unauthorized emission equal to or in excess of a reportable quantity (RQ).

Proposed §101.1(85) would define "Regulated entity" as all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location. Owners or operators of pipelines, gathering lines, and flow lines under common ownership or control in a particular county may be treated as a single regulated entity for purposes of assessment and regulation. These changes were required by HB 2129. The remainder of the subsections are renumbered accordingly.

There are several revisions proposed to the definition of "Reportable quantity (RQ)." First, the proposed amendment to §101.1(84)(A), renumbered as §101.1(88), would clarify that RQ values apply to facilities and not regulated entities, therefore, the language "for each facility" has been added. Second, when determining if a compound is listed in either 40 Code of Federal Regulation (CFR) Part 302, Table 302.4 or 40 CFR Part 355, Appendix A, the owner or operator must use either the listed compound name or the Chemical Abstracts Service (CAS) number, whichever is more specific. Although the commission believes that this concept is already widely being followed, specific rule language is needed since some compounds can have multiple names. The compound name used by the owner or operator might not be the exact compound name listed in the two tables, but the CAS number should be the same. The proposed amendment to the definition of "Reportable quantity" would clarify that the RQ requirements are for each facility given the changed definition of emissions event.

Second, proposed §101.1(88)(A)(i)(III)(-p-), would provide for RQs for "oxides of nitrogen." The new RQs for oxides of nitrogen would combine all of the oxides of nitrogen, including nitrogen oxide and nitrogen dioxide into item (-p-) and delete item (-q-). The RQ would be 200 pounds in ozone nonattainment areas, ozone maintenance areas, ozone early action compact areas, Nueces County, and San Patricio County. Nueces and San Patricio Counties are included because design value for that area is close to exceeding the national ambient air quality standards (NAAQS) for ozone. The 200-pound figure is based upon adding the current RQs for nitrogen oxide and nitrogen dioxide together. For all other areas of the state, where ozone levels are not approaching the ozone NAAQS, the RQ would be 5,000 pounds.

The commission is also proposing to establish a statewide specific RQ of 5,000 pounds for certain compounds, all of which are either chlorofluorocarbons (CFC), hydrofluorocarbons (HFC), or hydrochlorofluorocarbons (HCFC) in proposed items (-q-) - (-ss-). The compounds are neither criteria pollutants nor precursors of ozone, and therefore, the 100-pound default for the nonattainment, near nonattainment, maintenance, and early action compact areas should not apply.

In proposed §101.(88)(A)(ii), the default RQ for all other air contaminants when there is not a listed RQ is being revised, such that the default RQ for nonattainment areas, near-nonattainment areas, maintenance areas, and early action compact areas and Nueces and San Patricio Counties will remain at 100 pounds, while the default RQ for all other areas is being proposed at 5,000 pounds.

In proposed §101.1(88)(C), boilers and combustion turbines that are fueled by gaseous fuels other than natural gas would be allowed to report only opacity, provided that the fuel being burned does not contain hazardous air pollutants or highly reactive volatile organic compounds at more than 0.02% by weight.

The proposed amendment to §101.1(86), renumbered as §101.1(90), would clarify that the emissions from a scheduled maintenance, startup, or shutdown activity will be considered as part of the activity as long as they do not exceed the estimates in the notification by more than an RQ. Additionally, the term "facility" is replaced with "regulated entity." These changes were required by HB 2129.

The commission proposes to amend §101.1(87) by deleting the definition of "Site" in order to incorporate the definition of "Regulated entity" to comply with applicable statutory provisions of HB 2129. The remaining definitions in §101.1 are renumbered accordingly.

Subchapter F: Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities

Division 1: Emissions Events

Section 101.201 - Emissions Event Reporting and Recordkeeping Requirements

The commission proposes to add requirements for reporting to local air pollution control agencies with jurisdiction to §101.201(a)(1)(B) to clarify that local air pollution agencies should receive initial notifications and final reports.

The commission proposes to amend §101.201(a)(2) to clarify that owners and operators of regulated entities, except for boilers or combustion turbines, are required to report emissions events for each facility with emissions that exceed an RQ. The revised definition of "Emissions event" could cause confusion about whether emissions from all facilities involved in a reportable emissions event should be included in the notification and report.

The commission proposes to amend §101.201(a)(2)(B) and (3)(B) to provide new language that requires identification of the commission Regulated Entity Number (RN) of the regulated entity experiencing an emissions event. Now that the commission has changed to a Central Registry system, the air account number is no longer the primary identifier of the regulated entity. The RN is necessary to report incidents via the agency's electronic reporting system. If the regulated entity does not have an RN or air account number, the location of a release and a contact telephone number in notifications and final reports must be reported. Accordingly, §101.201(a)(2)(C) and (3)(C) is proposed to be deleted, since the information required by subsection (a)(2)(B) and (3)(B) gives the agency sufficient information regarding location. Subsequent subparagraphs are relettered accordingly in §101.201(a)(2) and (3).

The commission proposes to delete language requiring the reporting of authorized emissions limits and if applicable, the estimated opacity and the authorized opacity limit in proposed §101.201(a)(2)(H), relettered as subparagraph (G).

The commission proposes to add the term "best known" and "at the time of the notification" to existing §101.201(a)(2)(I), relettered as subparagraph (H), and to existing §101.201(a)(3)(D), relettered as subparagraph (C). This revision would clarify that the cause of the emissions event is based on best available information at the time of the notification.

The commission proposes to amend §101.201(a)(3) to clarify that owners and operators of boilers and combustion turbines are required to report emissions events for each facility with emissions that exceed an RQ. The revised definition of "Emissions event" could cause confusion about whether emissions from all facilities involved in a reportable emissions event should be included in the notification and report.

The commission proposes to amend §101.201(a)(3)(E), relettered as subparagraph (D), to remove the requirement to report the facility identification numbers or emission point numbers.

The commission proposes to amend §101.201(a)(3)(I) by deleting the provision to report the authorized opacity limit in the initial notification. Opacity is not an emission and therefore not necessary for evaluation of impacts.

The commission proposes to amend §101.201(b) by deleting the phrase, "such records shall identify."

The commission proposes to amend §101.201(b) by separating subsection (b) into two paragraphs. The commission proposes §101.201(b)(1) to outline the provisions required in final records of reportable emissions events. Existing paragraphs in §101.201(b) are relettered as subparagraphs (A) - (L).

The commission proposes to amend §101.201(b)(1)(B) and (2)(B) to provide new language that requires identification of the commission RN of the regulated entity experiencing an emissions event. Now that the commission has changed to a Central Registry system, the air account number is no longer the primary identifier of the regulated entity. The RN is necessary to report incidents via the agency's electronic reporting system. If the regulated entity does not have an RN or air account number, the location of a release and a contact telephone number in prior notifications and final reports must be reported.

Proposed §101.201(b)(7), renumbered as subsection (b)(1)(G), is amended to provide language that requires reporting of air contaminants by facility, and to allow reporting of air contaminants in the final report that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period without speciation, instead these compounds or mixtures of air contaminants may be identified together as "other." This provision is intended to address concerns expressed at the stakeholder meetings that it is difficult and unnecessary to speciate and report very small quantities of chemicals involved in a reportable event.

Proposed §101.201(b)(8), renumbered as subsection (b)(1)(H), is amended to eliminate reporting of the authorized opacity limit and opacity estimate in the final report. The proposed amendment adds language that requires that the methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission to clarify how these estimates should be calculated. Language has also been added to allow the compounds or mixtures of air contaminants listed as "other" under §101.201(b)(1)(G) to be treated as a group for estimating emissions.

The commission proposes to amend §101.201(b)(10), renumbered as §101.201(b)(1)(J), to add the terms "best known" and "at the time of the notification" to clarify that the cause of the emission event is based on best available information at the time of reporting.

The commission also proposes §101.201(b)(2)(A) - (J) to provide separate provisions for required records for non-reportable emissions events.

The proposed requirements in §101.201(b)(2)(A), (C), (E), and (F) are the same as the language in §101.201(b)(1).

The commission proposes §101.201(b)(2)(D) to require the reporting of the common name of the process unit or area, the common name of the facility that experienced the emissions event, and the common name of the emission point where the unauthorized emissions were released to the atmosphere.

The commission proposes §101.201(b)(2)(G) to require reporting of air contaminants by facility, and to allow reporting of air contaminants in the final report that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period without speciation, instead these compounds or mixtures of air contaminants may be identified together as "other." This provision is intended to address concerns expressed at the stakeholder meetings that it is difficult and unnecessary to speciate and report very small quantities of chemicals involved in a reportable event.

The commission proposes §101.201(b)(2)(H) to require that when estimating total quantities and the authorized emissions limits for those compounds or mixtures described in proposed §101.201(b)(2)(G), the methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized. Language has also been added to allow the compounds or mixtures of air contaminants listed as "other" under §101.201(b)(2)(G) to be treated as a group for estimating emissions.

The commission proposes §101.201(b)(2)(I) to require the recording of the best known cause of the emissions event at the time of recording.

The commission proposes §101.201(b)(2)(J) to require the recording of any additional information necessary to evaluate the emissions event.

The commission proposes to add requirements for reporting to local air pollution control agencies with jurisdiction to §101.201(c) to clarify that local air pollution agencies should receive initial notifications and final reports.

The proposed amendment to §101.201(d) would add language that allows the use of gaseous fuels other than natural gas, provided the hazardous air pollutants or highly reactive volatile organic compound content of the fuel does not exceed 0.02% by weight.

The commission proposes to amend §101.201(e) by deleting duplicative language that is now covered in the proposed definition of "Excess opacity event" in §101.1. The commission proposes to add reporting to local air pollution control agencies with jurisdiction to §101.201(e) - (g) to clarify that local air pollution agencies should receive initial notifications and final reports.

The commission proposes to amend §101.201(e)(2) by adding the requirement to identify the commission RN of the regulated entity experiencing an excess opacity event. Now that the commission has changed to a Central Registry system, the air account number is no longer the primary identifier of the regulated entity. The RN is necessary to report incidents via the agency's electronic reporting system. If the regulated entity does not have an RN or air account number, the location of a release and a contact telephone number in notifications and final reports must be reported.

The commission proposes to amend §101.201(e)(9) by adding the term "best known" and "at the time of the notification" to clarify that the cause of the excess opacity event is based on the best known information at the time of the notification.

The commission proposes to clarify §101.201(f) by adding language requiring the submittal of a technical analysis of emissions events to appropriate local air pollution agencies with jurisdiction.

The commission proposes to delete the existing language in §101.201(h) and proposes new language to require annual emissions event reporting by March 31 of each calendar year or as directed by the executive director. This report would be required for owners or operators that are subject to reporting under §101.10, Emissions Inventory Requirements, and owners and operators that are not subject to reporting under §101.10 and are located in nonattainment, maintenance, early action compact areas, Nueces County, and San Patricio County, that experience at least one emissions event during the calendar year. For those entities that already submit an emission inventory report, this information would be included in that report. For entities that do not submit an emission inventory report, this report must be submitted electronically except that small businesses may submit by other viable means.

Division 2: Maintenance, Startup, and Shutdown Activities

Section 101.211 - Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements

The commission proposes to amend §101.211(a) to clarify that actual emissions from maintenance, startup, or shutdown activities that exceed the estimated emissions in the initial notification by more than an RQ are emissions events. This change is required by HB 2129.

The commission proposes to amend §101.211(a), to add "with jurisdiction" to clarify that local air pollution agencies should receive initial notifications and final reports.

The commission proposes to amend §101.211(a) by adding a reference to §101.1 where excess opacity is proposed to be defined, and accordingly delete the reference to §101.201(e) for excess opacity.

The commission proposes to amend §101.211(a)(1)(B) and (2)(B) and (b)(1)(B) and (2)(B) to add language that requires the identification of the commission RN of the regulated entity experiencing the activity. If the regulated entity does not have an RN or air account number, the location of a release and a contact telephone number in prior notifications and final reports must be reported.

The commission proposes to amend §101.211(a)(1)(F) to denote that these scheduled maintenance, startup, and shutdown activities are not emissions events, but are emissions activities.

The commission proposes to amend §101.211(a)(1)(H) to provide language that requires reporting of air contaminants by facility, and to allow reporting of air contaminants in the final report that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period without speciation, instead these compounds or mixtures of air contaminants may be identified together as "other."

The commission proposes to amend §101.211(a)(1)(I) and existing language in subsection (b)(9), renumbered as subsection (b)(1)(I), to add language that requires that the methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission to clarify how these estimates should be calculated. Language has also been added to allow the compounds or mixtures of air contaminants listed as "other" under §101.211(a)(1)(H) to be treated as a group for estimating emissions.

The commission proposes to amend §101.211(b) by separating subsection (b) into two paragraphs. The commission proposes §101.211(b)(1) to outline provisions regarding final records for regulated entities that are required to notify of scheduled maintenance, startup, or shutdown activities. The existing paragraphs in §101.211(b) are relettered as subparagraphs (A) - (K).

Proposed §101.211(b)(2), renumbered as subsection (b)(1)(B), is amended to provide language that requires identification of the commission RN of the regulated entity experiencing the activity. If the regulated entity does not have an RN or air account number, the location of a release and a contact telephone number in notifications and final reports must be reported.

Proposed §101.211(b)(5), relettered as subsection (b)(1)(E), is amended to add "experienced the emissions activity" and accordingly delete "experienced the emissions event" to denote that the associated scheduled maintenance, startup, and shutdown activities are not emissions events, but are emissions activities.

Proposed §101.211(b)(8), renumbered as subsection (b)(1)(H), is amended to provide language that requires reporting of air contaminants by facility, and to allow reporting of air contaminants in the final report that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period without speciation, instead these compounds or mixtures of air contaminants may be identified together as "other."

The commission proposes to amend §101.211(b)(9), relettered as subsection (b)(1)(I), to delete the reference to existing paragraph (8) and to refer to the relettered subparagraph (H). Also, the commission proposes that compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than one pound in a 24-hour period, are not required to be included in the report. Language has also been added to allow the compounds or mixtures of air contaminants listed as "other" under §101.211(b)(8) to be treated as a group for estimating emissions.

The commission also proposes §101.211(b)(2)(A) - (I) to add provisions regarding final records for facilities that were not required to notify of scheduled maintenance, startup, or shutdown activities.

The proposed requirements in §101.211(b)(2)(A) - (G) are the same as the proposed requirements in §101.211(b)(1).

The commission proposes §101.211(b)(2)(H) to require the recording of the compound descriptive type of the individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1, that are known through common process knowledge, past engineering analysis, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 and that were unauthorized. The commission also proposes that compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period may be reported without speciation, instead these compounds or mixtures of air contaminants may be identified together as "other."

The commission proposes §101.211(b)(2)(I) to require that when estimating total quantities and the authorized emissions limits for those compounds or mixtures described in proposed §101.211(b)(2)(G), the methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit, rule, or order of the commission. For all other situations, good engineering practice should be utilized. Language has also been added to allow the compounds or mixtures of air contaminants listed as "other" under §101.211(b)(2)(H) to be treated as a group for estimating emissions.

The commission proposes to add language to §101.211(c) to require that reporting for scheduled maintenance, startup, or shutdown activities must also be reported to appropriate local air pollution agencies with jurisdiction.

The commission proposes to amend §101.211(d) to allow boilers and combustion turbines equipped with a continuous emission monitoring system using fuels with less than 0.02% hazardous air pollutants or highly reactive volatile organic compounds, are exempt from creating and submitting final records if the information in the initial notification is the same as in the final report.

The commission proposes to add language to §101.211(e) to require that a copy of the requested technical plan for a scheduled maintenance, startup, or shutdown activity be sent to the local air pollution agency with jurisdiction.

The commission proposes to add §101.211(f) to require annual reporting of emissions resulting from scheduled maintenance, startup, and shutdown activities. This report would be required for owners or operators that are subject to reporting under §101.10, Emissions Inventory Requirements, and owners and operators that are not subject to reporting under §101.10 and are located in nonattainment, maintenance, early action compact areas, Nueces County, and San Patricio County, that experience at least one scheduled maintenance, startup, or shutdown activity during the calendar year. For those entities that already submit an emission inventory report, this information would be included in that report. For entities that do not submit an emission inventory report, this report must be submitted electronically except that small businesses may submit by other viable means.

Division 3: Operational Requirements, Demonstrations, and Actions to Reduce Excessive Emissions

Section 101.221 - Operational Requirements

The proposed amendment to §101.221(d) adds the phrase "including New Source Performance Standards (40 Code of Federal Regulations Part 60) and National Emission Standards for Hazardous Air Pollutants (40 Code of Federal Regulations Parts 61 and 63)" to specify particular federal requirements that also regulate emissions from maintenance, startup, and shutdown activities.

The commission proposes to delete §101.221(g).

Section 101.222 - Demonstrations

The commission proposes to amend §101.222(b)(1) to clarify when the commission will initiate enforcement for failure to report and for the underlying emissions event itself. The proposed amendment also provides that subsection (b) does not apply for minor omissions or inaccuracies that do not impair the commission's ability to review the event according to this rule, unless the owner or operator knowingly or intentionally falsified the information in the report.

The proposed amendment to §101.222(b)(3) and (d)(2) provides a reasonableness standard for determining this criteria. The proposed amendment would also change the criteria of "could not have been avoided by good design, operation, and maintenance practices" to "could not have been reasonably avoided by technically feasible design, operation, and maintenance practices consistent with good engineering practice."

The commission proposes to add §101.222(b)(12) to provide a new criteria for the affirmative defense. By definition, maintenance, startup, or shutdown emissions that are not reported prior to their occurrence are considered unscheduled maintenance, and therefore fall into the category of emissions events. However, under this new provision, if the owner or operator was reasonably able to provide notification to the agency prior to the activity but did not provide the notification, the owner or operator would lose the ability to claim the affirmative defense. This provision would provide a disincentive for owners or operators to decide to skip notification and be treated as an emissions event.

The proposed amendment to §101.222(c) deletes language that provides that emissions from scheduled maintenance, startup, and shutdown activities are required to be included in certain permits unless the owner or operator proves the criteria in subsection (c)(1) - (9). The proposed language provides that an affirmative defense is available for all claims in enforcement actions for these emissions, other than claims for administrative technical orders and actions for injunctive relief, if the owner or operator proves the criteria listed in the rule. The affirmative defense applies only to the emissions from these activities, and does not apply to subsequent or independent obligations, such as recordkeeping or reporting. The proposed amendment to §101.222(c) would also remove references to maintenance emissions that will be addressed in proposed §101.222(h).

The commission proposes to add language to §101.222(c)(1), (d)(1), and (e)(1), which provides that failure to report information that does not impair the commission's ability to review the event will not result in enforcement action and loss of opportunity to claim the affirmative defense.

The proposed amendment to §101.222(e) deletes language that provides that emissions from scheduled maintenance, startup, and shutdown activities are required to meet the requirements of §111.111(a), unless the owner or operator proves the criteria in subsection (e)(1) - (9). The proposed language provides that an affirmative defense is available for all claims in enforcement actions for certain emissions, other than claims for administrative technical orders and actions for injunctive relief, if the owner or operator proves the criteria listed in the rule. The affirmative defense applies only to the emissions from these activities, and does not apply to subsequent or independent obligations, such as recordkeeping or reporting. The proposed amendment to §101.222(e) would also remove references to maintenance emissions, which will be addressed in proposed §101.222(h).

The proposed amendment to §101.222(h) would delete the current language providing an expiration date for the section. The proposed new language would phase out the affirmative defense for emissions from routine maintenance activities. The commission intends to begin allowing authorization of these types of emissions as permits come in for renewal, amendment, or issuance. This would include activities such as plant turnarounds and preventative maintenance such as routine replacement of facility parts that are regular and quantifiable. Upon permit amendment, alteration, renewal, or issuance, the affirmative defense will no longer be available for these types of emissions. For those facilities that are authorized through other mechanisms such as permits by rule, standard permits, standard exemptions, and special exemptions, the rule would allow two years for those facilities to have their routine maintenance activities authorized before losing the ability to claim an affirmative defense for those emissions. Subject to meeting the conditions in §101.222(c)(1) - (9), the affirmative defense will continue to be available for maintenance activities that arise from sudden and reasonably unforeseeable events beyond the control of the operator, which requires the immediate corrective action to restore normal operation. Generally, these emissions include maintenance that is initiated to resolve an operational problem with a facility. Opacity events resulting from maintenance activities are also included in proposed §101.222(h) and would be treated in the same way as emissions from maintenance activities.

Section 101.223 - Actions to Reduce Excessive Emissions

The proposed amendment to §101.223(a)(1) would add the requirement to submit a corrective action plan to the local air pollution agency with jurisdiction to clarify that local air pollution agencies should receive the corrective action plan.

The commission proposes to delete §101.223(e).

FISCAL NOTE: COST TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed amendments are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed amendments. The proposed rulemaking would modify current commission rules concerning air emissions events. State and local governments do not typically engage in the type of activities that would generate such emissions, and the proposed rulemaking would not apply to these governmental entities.

HB 2912, §5.01 and §18.14, and HB 2129 required revisions of commission rules concerning air emissions events, maintenance, startup, and shutdown activities. The revised rules for §§101.221 - 101.223 received limited SIP approval from EPA and included an expiration date of June 30, 2005. The proposed rulemaking would delete the expiration deadline of these sections and would provide specificity for implementing the statutes regarding emissions events reporting while providing specific outcomes for proving specific criteria regarding certain unauthorized emissions. The rulemaking would modify definitions, add new definitions, revise notification requirements, revise reporting requirements, revise demonstration criteria, remove protection for routinely performed scheduled maintenance activities, and change the protection for startup, shutdown, and nonroutine maintenance activities to affirmative defense. Regulated entities would be required to submit a single annual emissions report for all emissions, and they would be required to submit certain information to local air pollution programs with jurisdiction. The proposed changes to current rules and the associated SIP must be approved by EPA.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the changes seen in the proposed amendments will be more specificity regarding emissions events rules and the submission of a single, annual emissions report detailing all emissions events.

The proposed rulemaking affects persons or entities that violate emissions and opacity limitations associated with certain emissions events, maintenance, startup, and shutdown activities. Since these events must currently be documented, whether or not they are submitted in a report, no significant adverse fiscal implications are anticipated for individuals or large businesses that must now prepare a single annual report.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Small or micro-businesses would be affected in the same manner as individuals or large businesses by the proposed rulemaking in that they would be required to prepare a single annual emissions report.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required

because the proposed amendments do not adversely affect a local economy in a material way for the first five years that the proposed amendments are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments would revise the notification and reporting requirements and demonstration criteria for emissions events and scheduled maintenance, startup, and shutdown activities. The proposed amendments would also provide for an affirmative defense for certain emissions from startup, shutdown, and nonroutine maintenance activities, and would phase out the affirmative defense for emissions from routine maintenance activities. In addition, the proposed rulemaking would modify and add definitions, and would also implement HB 2129, §1. The proposed amendments will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed amendments do not exceed a standard set by federal law or exceed an express requirement of state law. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the commission, but is authorized by specific sections of the Texas Health and Safety Code and Texas Water Code that are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed amendments do not meet any of the four applicability requirements.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed amendments. The specific purpose of this rulemaking is to revise notification and reporting requirements and demonstration criteria for emissions events and scheduled maintenance, startup, and shutdown activities. The rulemaking would also provide for an affirmative defense for certain emissions from startup, shutdown, and nonroutine maintenance activities, and would phase out the affirmative defense for emissions from routine maintenance activities, and would modify and add definitions. Promulgation and enforcement of the proposed amendments would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the proposed amendments do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed amendments will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Sections 101.201 - 101.223 are applicable requirements under 30 TAC Chapter 122, Federal Operating Permits. Upon the effective date of this rulemaking, owners or operators subject to the Federal Operating Permit Program will be required to certify compliance with amended §§101.201 - 101.223.

ANNOUNCEMENT OF HEARINGS

Public hearings for this proposed rulemaking have been scheduled for the following dates: August 2, 2005, at 2:00 p.m., in Austin, TCEQ complex, Building C, Room 131E, 12100 Park 35 Circle; August 3, 2005, at 10:00 a.m., in Arlington, North Central Texas Council of Governments, Transportation Board Room, 3rd Floor, 616 Six Flags Drive; August 4, 2005, at 7:00 p.m., in Houston, City of Houston Council Chambers, 2nd Floor, 901 Bagby; August 5, 2005, at 1:00 p.m., in Corpus Christi, Texas A&M-Corpus Christi Campus, Natural Resources Center Building, Room 1003, 6300 Ocean Drive; and August 8, 2005, at 10:00 a.m., in

Midland, UT of the Permian Basin, Center for Energy and Economic Diversification Building, 1400 North FM 1788. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. A five-minute time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during each hearing; however, commission staff members will be available to discuss the proposal 30 minutes before each hearing and will answer questions before and after each hearing.

Persons planning to attend a hearing who have special communication or other accommodation needs should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-024-101-CE. Comments must be received no later than 5:00 p.m., on August 8, 2005. For further information, please contact Ramiro Garcia, Field Operations Division at (512) 239-4481 or Steve Ligon, Field Operations Division at (512) 239-1527.

SUBCHAPTER A. GENERAL RULES

30 TAC §101.1

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events; and §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions of air contaminants except as authorized by commission by rule or order.

The proposed amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.017.

§101.1. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Boiler--Any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam or to heat water.

(6) [~~(5)~~] Capture system--All equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(7) [~~(6)~~] Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(8) [~~(7)~~] Carbon adsorber--An add-on control device that uses activated carbon to adsorb volatile organic compounds from a gas stream.

(9) [~~(8)~~] Carbon adsorption system--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(10) [~~(9)~~] Coating--A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.

(11) [~~(10)~~] Cold solvent cleaning--A batch process that uses liquid solvent to remove soils from the surfaces of metal parts or to dry the parts by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

(12) [~~(11)~~] Combustion unit--Any boiler plant, furnace, incinerator, flare, engine, or other device or system used to oxidize solid, liquid, or gaseous fuels, but excluding motors and engines used in propelling land, water, and air vehicles.

(13) Combustion turbine--Any gas turbine system that is gas and/or liquid fuel fired with or without power augmentation. This unit is either attached to a foundation or is portable equipment operated at a specific minor or major source for more than 90 days in any 12-month period. Two or more gas turbines powering one shaft will be treated as one unit.

(14) [~~(12)~~] Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility that disposes only waste generated on-site or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(15) [~~(13)~~] Commercial incinerator--An incinerator used to dispose of waste material from retail and wholesale trade establishments.

(16) [~~(14)~~] Commercial medical waste incinerator--A facility that accepts for incineration medical waste generated outside the property boundaries of the facility.

(17) [~~(15)~~] Component--A piece of equipment, including, but not limited to, pumps, valves, compressors, and pressure relief valves[~~,~~] that has the potential to leak volatile organic compounds.

(18) [~~(16)~~] Condensate--Liquids that result from the cooling and/or pressure changes of produced natural gas. Once these liquids are processed at gas plants or refineries or in any other manner, they are no longer considered condensates.

(19) [~~(17)~~] Construction-demolition waste--Waste resulting from construction or demolition projects.

(20) [~~(18)~~] Control system or control device--Any part, chemical, machine, equipment, contrivance, or combination of same, used to destroy, eliminate, reduce, or control the emission of air contaminants to the atmosphere.

(21) [~~(19)~~] Conveyorized degreasing--A solvent cleaning process that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of metal parts to be cleaned or dried using either cold solvent or vaporized solvent. A conveyorized degreasing process is fully enclosed except for the conveyor inlet and exit portals.

(22) [~~(20)~~] Criteria pollutant or standard--Any pollutant for which there is a national ambient air quality standard established under 40 Code of Federal Regulations Part 50.

(23) [~~(21)~~] Custody transfer--The transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(24) [~~(22)~~] *De minimis* impact--A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source that has undergone a major modification that [~~, which~~] does not exceed the following specified amounts.
Figure: 30 TAC §101.1(24)
[~~Figure: 30 TAC §101.1(22)~~]

(25) [~~(23)~~] Domestic wastes--The garbage and rubbish normally resulting from the functions of life within a residence.

(26) [~~(24)~~] Emissions banking--A system for recording emissions reduction credits so they may be used or transferred for future use.

(27) [~~(25)~~] Emissions event--Any upset event or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in unauthorized emissions of air contaminants from one or more [~~an~~] emissions points at a regulated entity [~~point~~].

(28) [~~(26)~~] Emissions reduction credit--Any stationary source emissions reduction that has been banked in accordance with Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Banking and Trading).

(29) [~~(27)~~] Emissions reduction credit certificate--The certificate issued by the executive director that indicates the amount of qualified reduction available for use as offsets and the length of time the reduction is eligible for use.

(30) [~~(28)~~] Emissions unit--Any part of a stationary source that emits, or would have the potential to emit, any pollutant subject to regulation under the Federal Clean Air Act.

(31) Excess opacity event--When an opacity reading is equal to or exceeds 15 additional percentage points above an applicable opacity limit, averaged over a six-minute period.

(32) [~~(29)~~] Exempt solvent--Those carbon compounds or mixtures of carbon compounds used as solvents that have been excluded from the definition of volatile organic compound.

(33) [~~(30)~~] External floating roof--A cover or roof in an open top tank that rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them.

(34) [~~(31)~~] Federal motor vehicle regulation--Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines, 40 Code of Federal Regulations Part 85.

(35) [~~(32)~~] Federally enforceable--All limitations and conditions that are enforceable by the United States Environmental Protection Agency administrator, including those requirements developed under 40 Code of Federal Regulations (CFR) Parts 60 and 61; requirements within any applicable state implementation plan (SIP); and any permit requirements established under 40 CFR §52.21 or under regulations approved under 40 CFR Part 51, Subpart I [~~1~~], including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

(36) [~~(33)~~] Flare--An open combustion unit (i.e., lacking an enclosed combustion chamber) whose combustion air is provided by uncontrolled ambient air around the flame, and that [~~which~~] is used as a control device. A flare may be equipped with a radiant heat shield (with or without a refractory lining), but is not equipped with a flame air control damping system to control the air/fuel mixture. In addition, a flare may also use auxiliary fuel. The combustion flame may be elevated or at ground level. A vapor combustor, as defined in this section, is not considered a flare.

(37) [~~(34)~~] Fuel oil--Any oil meeting the American Society for Testing and Materials (ASTM) specifications for fuel oil in ASTM D396-01, Standard Specifications for Fuel Oils, revised 2001. This includes fuel oil grades 1, 1 (Low Sulfur), 2, 2 (Low Sulfur), 4 (Light), 4, 5 (Light), 5 (Heavy), and 6.

(38) [~~(35)~~] Fugitive emission--Any gaseous or particulate contaminant entering the atmosphere that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(39) [~~(36)~~] Garbage--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, and handling and sale of produce and other food products.

(40) [~~(37)~~] Gasoline--Any petroleum distillate having a Reid vapor pressure of four pounds per square inch (27.6 kilopascals) or greater that [~~, which~~] is produced for use as a motor fuel, and is commonly called gasoline.

(41) [~~(38)~~] Hazardous waste management facility--All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(42) [~~(39)~~] Hazardous waste management unit--A landfill, surface impoundment, waste pile, boiler, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(43) [~~(40)~~] Hazardous wastes--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency [~~EPA~~] under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act [~~RCRA~~], 42 United States Code, §§6901 *et seq*., as amended.

(44) [~~(41)~~] Heatset (used in offset lithographic printing)--Any operation where heat is required to evaporate ink oil from the printing ink. Hot air dryers are used to deliver the heat.

(45) [~~(42)~~] High-bake coatings--Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(46) [~~(43)~~] High-volume low-pressure spray guns--Equipment used to apply coatings by means of a spray gun that operates between 0.1 and 10.0 pounds per square inch gauge air pressure.

(47) [~~(44)~~] Incinerator--An enclosed combustion apparatus and attachments that is used in the process of burning wastes for the primary purpose of reducing its volume and weight by removing the combustibles of the waste and is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device that burns 10% or more of solid waste on a total British thermal unit (Btu) heat input basis averaged over any one-hour period is considered to be an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning 1.0% or more of solid waste on a total Btu heat input basis averaged annually is also considered to be an incinerator. An open-trench type (with closed ends) combustion unit may be considered an incinerator when approved by the executive director. Devices burning untreated wood scraps, waste wood, or sludge from the treatment of wastewater from the process mills as a primary fuel for heat recovery are not included under this definition. Combustion devices permitted under this title as combustion devices other than incinerators will not be considered incinerators for application of any regulations within this title provided they are installed and operated in compliance with the condition of all applicable permits.

(48) [~~(45)~~] Industrial boiler--A boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(49) [~~(46)~~] Industrial furnace--Cement kilns; lime kilns; aggregate kilns; phosphate kilns; coke ovens; blast furnaces; smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces; titanium dioxide chloride process oxidation reactors; methane reforming furnaces; pulping recovery furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; and other devices the commission may list.

(50) [~~(47)~~] Industrial solid waste--Solid waste resulting from, or incidental to, any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class 1 industrial solid waste or Class 1 waste is any industrial solid waste designated as Class 1 by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 and §335.505 of this title (relating to Definitions and Class 1 Waste Determination).

(B) Class 2 industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class 1 or Class 3, as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(C) Class 3 industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class 3 Waste Determination).

(51) [~~(48)~~] Internal floating cover--A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell.

(52) [~~(49)~~] Leak--A volatile organic compound concentration greater than 10,000 parts per million by volume or the amount specified by applicable rule, whichever is lower; or the dripping or exuding of process fluid based on sight, smell, or sound.

(53) [~~(50)~~] Liquid fuel--A liquid combustible mixture, not derived from hazardous waste, with a heating value of at least 5,000 British thermal units per pound.

(54) [~~(51)~~] Liquid-mounted seal--A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

(55) [~~(52)~~] Maintenance area--A geographic region of the state previously designated nonattainment under the Federal Clean Air Act (FCAA) Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under 42 United States Code, §7505a. The following are the maintenance areas within the state:

(A) Victoria Ozone Maintenance Area (60 *Federal Register* (FR) [~~FR~~]12453)--Victoria County; and

(B) Collin County Lead Maintenance Area (64 FR 55421[- ~~55425~~])--Portion of Collin County. Eastside: Starting at the intersection of South Fifth Street and the fence line approximately 1,000 feet south of the Exide property line going north to the intersection of South Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1,000 feet south of the Exide property line; Southside: Fence line approximately 1,000 feet south of the Exide property line.

(56) [~~(53)~~] Maintenance plan--A revision to the applicable state implementation plan, meeting the requirements of 42 United States Code, §7505a.

(57) [~~(54)~~] Marine vessel--Any watercraft used, or capable of being used, as a means of transportation on water, and that is constructed or adapted to carry, or that carries, oil, gasoline, or other volatile organic liquid in bulk as a cargo or cargo residue.

(58) [~~(55)~~] Mechanical shoe seal--A metal sheet that is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(59) [~~(56)~~] Medical waste--Waste materials identified by the Department of State Health Services as "special waste from health care-related facilities" and those waste materials commingled and discarded with special waste from health care-related facilities.

(60) [~~(57)~~] Metropolitan Planning Organization--That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 United States Code (USC), §134 and 49 USC, §1607.

(61) [~~(58)~~] Mobile emissions reduction credit--The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state regulations) emissions reduction generated by a mobile source as set forth in Chapter 114, Subchapter E or F of this title (relating to Low Emission Vehicle Fleet Requirements and Vehicle Retirement and Mobile Emission Reduction Credits), and that [~~which~~] has been banked in accordance with Subchapter H, Division 1 of this chapter.

(62) [~~(59)~~] Motor vehicle--A self-propelled vehicle designed for transporting persons or property on a street or highway.

(63) [~~(60)~~] Motor vehicle fuel dispensing facility--Any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

(64) [~~(61)~~] Municipal solid waste--Solid waste resulting from, or incidental to, municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste except industrial solid waste.

(65) [~~(62)~~] Municipal solid waste facility--All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(66) [~~(63)~~] Municipal solid waste landfill--A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2. A municipal solid waste landfill (MSWLF) unit also may receive other types of Resource Conservation and Recovery Act [~~RCRA~~] Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(67) [~~(64)~~] National ambient air quality standard--Those standards established under 42 United States Code, §7409, including standards for carbon monoxide, lead, nitrogen dioxide, ozone, inhalable particulate matter, and sulfur dioxide.

(68) [~~(65)~~] Net ground-level concentration--The concentration of an air contaminant as measured at or beyond the property boundary minus the representative concentration flowing onto a property as measured at any point. Where there is no expected influence of the air contaminant flowing onto a property from other sources, the net ground level concentration may be determined by a measurement at or beyond the property boundary.

(69) [~~(66)~~] New source--Any stationary source, the construction or modification of which was commenced after March 5, 1972.

(70) [~~67)~~] Nonattainment area--A defined region within the state that is designated by the United States Environmental Protection Agency (EPA) as failing to meet the national ambient air quality standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of 42 United States Code, §7407(d). For the official list and boundaries of nonattainment areas, see 40 Code of Federal Regulations Part 81 and pertinent *Federal Register* (FR) notices. The following areas comprise the nonattainment areas within the state for all national ambient air quality standards (NAAQS). EPA has indicated that it will revoke the one-hour ozone standard in full, including the associated designations and classifications, on June 15, 2005, which is one year following the effective date of the designations for the eight-hour NAAQS of June 15, 2004.

(A) Carbon monoxide (CO). El Paso CO nonattainment area (56 FR 56694)--Classified as a Moderate CO nonattainment area with a design value less than or equal to 12.7 parts per million. Portion of El Paso County. Portion of the city limits of El Paso: That portion of the City of El Paso bounded on the north by Highway 10 from Porfirio Diaz Street to Raynolds Street, Raynolds Street from Highway 10 to the Southern Pacific Railroad lines, the Southern Pacific Railroad lines from Raynolds Street to Highway 62, Highway 62 from the Southern Pacific Railroad lines to Highway 20, and Highway 20 from Highway 62 to Polo Inn Road. Bounded on the east by Polo Inn Road from Highway 20 to the Texas-Mexico border. Bounded on the south by the Texas-Mexico border from Polo Inn Road to Porfirio Diaz Street. Bounded on the west by Porfirio Diaz Street from the Texas-Mexico border to Highway 10.

(B) Inhalable particulate matter (PM_{10}). El Paso PM_{10} nonattainment area (56 FR 56694)--Classified as a Moderate PM_{10} nonattainment area. Portion of El Paso County that [~~which~~] comprises the El Paso city limit boundaries as they existed on November 15, 1990.

(C) Lead. No designated nonattainment areas.

(D) Nitrogen dioxide. No designated nonattainment areas.

(E) Ozone (one-hour).

(i) Houston-Galveston-Brazoria (HGB) [~~Houston/Galveston/Brazoria~~] one-hour ozone nonattainment area (56 FR 56694)--Classified as a Severe-17 ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) El Paso one-hour ozone nonattainment area (56 FR 56694)--Classified as a Serious ozone nonattainment area. Consists of El Paso County.

(iii) Beaumont-Port Arthur (BPA) [~~Beaumont/Port Arthur~~] one-hour ozone nonattainment area (69 FR 16483)--Classified as a Serious ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iv) Dallas-Fort Worth [~~Dallas/Fort Worth~~] one-hour ozone nonattainment area (63 FR 8128)--Classified as a Serious ozone nonattainment area. Consists of Collin, Dallas, Denton, and Tarrant Counties.

(F) Ozone (eight-hour).

(i) HGB [~~Houston/Galveston/Brazoria~~] eight-hour ozone nonattainment area (69 FR 23936)--Classified as a Moderate ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) BPA [~~Beaumont/Port Arthur~~] eight-hour ozone nonattainment area (69 FR 23936)--Classified as a Marginal ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iii) Dallas-Fort Worth [~~Dallas/Fort Worth~~] eight-hour ozone nonattainment area (69 FR 23936)--Classified as a Moderate ozone nonattainment area. Consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(iv) San Antonio eight-hour ozone nonattainment area (69 FR 23936)--Classified under the Federal Clean Air Act, Title I, Part D, Subpart 1 (42 United States Code, §7502), nonattainment deferred to September 30, 2005, or as extended by EPA.

(G) Sulfur dioxide. No designated nonattainment areas.

(71) [~~(68)~~] Non-reportable emissions event--Any emissions event that in any 24-hour period does not result in an unauthorized emission equal to or in excess of the reportable quantity [~~is not a reportable emissions event~~] as defined in this section.

(72) [~~(69)~~] Opacity--The degree to which an emission of air contaminants obstructs the transmission of light expressed as the percentage of light obstructed as measured by an optical instrument or trained observer.

(73) [~~(70)~~] Open-top vapor degreasing--A batch solvent cleaning process that is open to the air and that uses boiling solvent to create solvent vapor used to clean or dry metal parts through condensation of the hot solvent vapors on the colder metal parts.

(74) [~~(71)~~] Outdoor burning--Any fire or smoke-producing process that is not conducted in a combustion unit.

(75) [~~(72)~~] Particulate matter--Any material, except uncombined water, that exists as a solid or liquid in the atmosphere or in a gas stream at standard conditions.

(76) [~~(73)~~] Particulate matter emissions--All finely-divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by United States Environmental Protection Agency Reference Method 5, as specified at 40 Code of Federal Regulations (CFR) Part 60, Appendix A, modified to include particulate caught by an impinger train; by an equivalent or alternative method, as specified at 40 CFR Part 51; or by a test method specified in an approved state implementation plan.

(77) [~~(74)~~] Petroleum refinery--Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(78) [~~(75)~~] PM_{10}--Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers as measured by a reference method based on 40 Code of Federal Regulations (CFR) Part 50, Appendix J, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated with that Part 53.

(79) [~~(76)~~] PM_{10} emissions--Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 Code of Federal Regulations Part 51, or by a test method specified in an approved state implementation plan.

(80) [~~(77)~~] Polychlorinated biphenyl compound--A compound subject to 40 Code of Federal Regulations Part 761.

(81) [~~(78)~~] Process or processes--Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(82) [~~(79)~~] Process weight per hour--"Process weight" is the total weight of all materials introduced or recirculated into any specific process that may cause any discharge of air contaminants into the atmosphere. Solid fuels charged into the process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. The "process weight per hour" will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during that the equipment used to conduct the process is idle. For continuous operation, the "process weight per hour" will be derived by dividing the total process weight for a 24-hour period by 24.

(83) [~~(80)~~] Property--All land under common control or ownership coupled with all improvements on such land, and all fixed or movable objects on such land, or any vessel on the waters of this state.

(84) [~~(81)~~] Reasonable further progress--Annual incremental reductions in emissions of the applicable air contaminant that are sufficient to provide for attainment of the applicable national ambient air quality standard in the designated nonattainment areas by the date required in the state implementation plan.

(85) Regulated entity--All regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location. Owners or operators of pipelines, gathering lines, and flowlines under common ownership or control in a particular county may be treated as a single regulated entity for purposes of assessment and regulation of emissions events.

(86) [~~(82)~~] Remote reservoir cold solvent cleaning--Any cold solvent cleaning operation in which liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area.

(87) [~~(83)~~] Reportable emissions event--Any emissions event that [~~which,~~] in any 24-hour period, results in an unauthorized emission equal to or in excess of the reportable quantity as defined in this section.

(88) [~~(84)~~] Reportable quantity (RQ)--Is as follows for each facility:

(A) for individual air contaminant compounds and specifically listed mixtures by name or Chemical Abstracts Service (CAS) number, either:

(i) the lowest of the quantities:

(I) listed in 40 Code of Federal Regulations (CFR) Part 302 [~~§302~~], Table 302.4, the column "final RQ";

(II) listed in 40 CFR Part 355 [~~§355~~], Appendix A, the column "Reportable Quantity"; or

(III) listed as follows:

(-a-) butanes (any isomer)--5,000 pounds;

(-b-) butenes (any isomer, except 1,3-butadiene)--5,000 pounds, except in the Houston-Galveston-Brazoria [~~Houston/Galveston/Brazoria~~] (HGB) and Beaumont-Port Arthur [~~Beaumont/Port Arthur~~] (BPA) ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) [~~(67)(E)(i) and (iii)~~] of this section, where the RQ must [~~shall~~] be 100 pounds;

(-c-) ethylene--5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) [~~(67)(E)(i) and (iii)~~] of this section, where the RQ must [~~shall~~] be 100 pounds;

(-d-) carbon monoxide--5,000 pounds;

(-e-) pentanes (any isomer)--5,000 pounds;

(-f-) propane--5,000 pounds;

(-g-) propylene--5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) [~~(67)(E)(i) and (iii)~~] of this section, where the RQ must [~~shall~~] be 100 pounds;

(-h-) ethanol--5,000 pounds;

(-i-) isopropyl alcohol--5,000 pounds;

(-j-) mineral spirits--5,000 pounds;

(-k-) hexanes (any isomer)--5,000 pounds;

(-l-) octanes (any isomer)--5,000 pounds;

(-m-) decanes (any isomer)--5,000 pounds;

(-n-) acetaldehyde--1,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) [~~(67)(E)(i) and (iii)~~] of this section, where the RQ must [~~shall~~] be 100 pounds;

(-o-) toluene--1,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) [~~(67)(E)(i) and (iii)~~] of this section, where the RQ must [~~shall~~] be 100 pounds;

(-p-) oxides of nitrogen [~~oxide~~]--200 [~~100~~] pounds in ozone nonattainment, ozone maintenance, early action compact areas, Nueces County, and San Patricio County, and 5,000 pounds in all other areas of the state, which should [~~shall~~] be used instead of the RQs for nitrogen oxide and nitrogen dioxide [~~RQ~~] provided in 40 CFR Part 302 [~~§302~~], Table 302.4, the column "final RQ"; [~~or~~]

(-q-) chlorodifluoromethane (HCFC-22)--5,000 pounds [~~nitrogen dioxide - 100 pounds, which shall be used instead of the RQ listed in 40 CFR §302, Table 302.4, the column "final RQ" or listed in 40 CFR §355, Appendix A, the column "Reportable Quantity"~~];

(-r-) trifluoromethane (HFC-23)--5,000 pounds;

(-s-) 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)--5,000 pounds;

(-t-) 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)--5,000 pounds;

(-u-) chloropentafluoroethane (CFC-115)--5,000 pounds;

(-v-) 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123)--5,000 pounds;

(-w-) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)--5,000 pounds;

(-x-) pentafluoroethane (HFC-125)--5,000 pounds;

(-y-) 1,1,2,2-tetrafluoroethane (HFC-134)--5,000 pounds;

(-z-) 1,1,1,2-tetrafluoroethane (HFC-134a)--5,000 pounds;

(-aa-) 1,1-dichloro-1-fluoroethane (HCFC-141b)--5,000 pounds;

(-bb-) 1-chloro-1,1-difluoroethane (HCFC-142b)--5,000 pounds;

(-cc-) 1,1,1-trifluoroethane (HFC-143a)--5,000 pounds;

(-dd-) 1,1-difluoroethane (HFC-152a)--5,000 pounds;

(-ee-) 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)--5,000 pounds;

(-ff-) 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)--5,000 pounds;

(-gg-) 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee)--5,000 pounds;

(-hh-) difluoromethane (HFC-32)--5,000 pounds;

(-ii-) ethylfluoride (HFC-161)--5,000 pounds;

(-jj-) 1,1,1,3,3,3-hexafluoropropane (HFC-236fa)--5,000 pounds;

(-kk-) 1,1,2,2,3-pentafluoropropane (HFC-245ca)--5,000 pounds;

(-ll-) 1,1,2,3,3-pentafluoropropane (HFC-245ea)--5,000 pounds;

(-mm-) 1,1,1,2,3-pentafluoropropane (HFC-245eb)--5,000 pounds;

(-nn-) 1,1,1,3,3-pentafluoropropane (HFC-245fa)--5,000 pounds;

(-oo-) 1,1,1,2,3,3-hexafluoropropane (HFC-236ea)--5,000 pounds;

(-pp-) 1,1,1,3,3-pentafluorobutane (HFC-365mfc)--5,000 pounds;

(-qq-) chlorofluoromethane (HCFC-31)--5,000 pounds;

(-rr-) 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)--5,000 pounds; or

(-ss-) 1-chloro-1-fluoroethane (HCFC-151a)--5,000 pounds;

(ii) if not listed in clause (i) of this subparagraph[~~, 100 pounds;~~]:

(I) 100 pounds in nonattainment, maintenance, early action compact areas, Nueces County, and San Patricio County; or

(II) 5,000 pounds in all other areas of the state;

(B) for mixtures of air contaminant compounds:

(i) where the relative amount of individual air contaminant compounds is known through common process knowledge or prior engineering analysis or testing, any amount of an individual air contaminant compound that equals or exceeds the amount specified in subparagraph (A) of this paragraph;

(ii) where the relative amount of individual air contaminant compounds in subparagraph (A)(i) of this paragraph is not known, any amount of the mixture that equals or exceeds the amount for any single air contaminant compound that is present in the mixture and listed in subparagraph (A)(i) of this paragraph;

(iii) where each of the individual air contaminant compounds listed in subparagraph (A)(i) of this paragraph are known to be less than 0.02% by weight of the mixture, and each of the other individual air contaminant compounds covered by subparagraph (A)(ii) of this paragraph are known to be less than 2.0% by weight of the mixture, any total amount of the mixture of air contaminant compounds greater than or equal to 5,000 pounds; or

(iv) where natural gas excluding methane and ethane, or air emissions from crude oil are known to be in an amount greater than or equal to 5,000 pounds or associated hydrogen sulfide and mercaptans in a total amount greater than 100 pounds, whichever occurs first;

(C) for opacity from boilers and combustion turbines as defined in this section fueled by natural gas, coal, lignite, wood, [~~or~~] fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight, or gaseous fuels other than natural gas, provided the hazardous air pollutants or highly reactive volatile organic compound content of the fuel does not exceed 0.02% by weight, opacity that is equal to or exceeds 15 additional percentage points above the applicable limit, averaged over a six-minute period. Opacity is the only RQ applicable to boilers and combustion turbines described in this paragraph; or [~~and~~]

(D) for facilities where air contaminant compounds are measured directly by a continuous emission monitoring system providing updated readings at a minimum 15-minute interval an amount, approved by the executive director based on any relevant conditions and a screening model, that would be reported prior to ground level concentrations reaching at any distance beyond the closest regulated entity [~~facility~~] property line:

(i) less than one-half of any applicable ambient air standards; and

(ii) less than two times the concentration of applicable air emission limitations.

(89) [~~(85)~~] Rubbish--Nonputrescible solid waste, consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(90) [~~(86)~~] Scheduled maintenance, startup, or shutdown activity--For activities with unauthorized emissions that are expected to exceed a reportable quantity (RQ), a scheduled maintenance, startup, or shutdown activity is an activity that [~~for which~~] the owner or operator of the regulated entity [~~facility~~] provides timely prior notice and a final report as required by §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements); the notice or final report includes the information required in §101.211 of this title; and the actual unauthorized emissions from the activity do not exceed the emissions estimates submitted in the initial notification by more than an RQ. For activities with unauthorized emissions that are not expected to, and do not, exceed an RQ, a scheduled maintenance, startup, or shutdown activity is one that is recorded as required by §101.211 of this title. Expected excess opacity events as described in §101.201(e) of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) resulting from scheduled maintenance, startup, or shutdown activities are those that provide prior notice (if required), and are recorded and reported as required by §101.211 of this title.

~~[(87) Site--For the purposes of Subchapter F of this chapter, means shall mean all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. Site includes any property identified in the permit or used in connection with the regulated activity at the same street address or location.]~~

(91) [~~(88)~~] Sludge--Any solid or semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant; water supply treatment plant, exclusive of the treated effluent from a wastewater treatment plant; or air pollution control equipment.

(92) [~~(89)~~] Smoke--Small gas-born particles resulting from incomplete combustion consisting predominately of carbon and other combustible material and present in sufficient quantity to be visible.

(93) [~~(90)~~] Solid waste--Garbage, rubbish, refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control equipment, and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land, if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas, or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under [~~the~~] Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency [~~EPA~~] under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act [~~RCRA~~], as amended (42 United States Code, §§6901 *et seq*.).

(94) [~~(91)~~] Sour crude--A crude oil that will emit a sour gas when in equilibrium at atmospheric pressure.

(95) [~~(92)~~] Sour gas--Any natural gas containing more than 1.5 grains of hydrogen sulfide per 100 cubic feet, or more than 30 grains of total sulfur per 100 cubic feet.

(96) [~~(93)~~] Source--A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the executive director shall determine whether multiple processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.

(97) [~~(94)~~] Special waste from health care related facilities--A solid waste that if improperly treated or handled, may serve to transmit infectious disease(s) and that [~~which~~] is comprised of the following: animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps.

(98) [~~(95)~~] Standard conditions--A condition at a temperature of 68 degrees Fahrenheit (20 degrees Centigrade) and a pressure of 14.7 pounds per square inch absolute (101.3 kiloPascals). Pollutant concentrations from an incinerator will be corrected to a condition of 50% excess air if the incinerator is operating at greater than 50% excess air.

(99) [~~(96)~~] Standard metropolitan statistical area--An area consisting of a county or one or more contiguous counties that is officially so designated by the United States Bureau of the Budget.

(100) [~~(97)~~] Submerged fill pipe--A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 centimeters) from the bottom or, when applied to a tank that is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.

(101) [~~(98)~~] Sulfur compounds--All inorganic or organic chemicals having an atom or atoms of sulfur in their chemical structure.

(102) [~~(99)~~] Sulfuric acid mist/sulfuric acid--Emissions of sulfuric acid mist and sulfuric acid are considered to be the same air contaminant calculated as H_2SO_4 and must [~~shall~~] include sulfuric acid liquid mist, sulfur trioxide, and sulfuric acid vapor as measured by Test Method 8 in 40 Code of Federal Regulations Part 60, Appendix A.

(103) [~~(100)~~] Sweet crude oil and gas--Those crude petroleum hydrocarbons that are not "sour" as defined in this section.

(104) [~~(101)~~] Total suspended particulate--Particulate matter as measured by the method described in 40 Code of Federal Regulations Part 50, Appendix B.

(105) [~~(102)~~] Transfer efficiency--The amount of coating solids deposited onto the surface or a part of product divided by the total amount of coating solids delivered to the coating application system.

(106) [~~(103)~~] True vapor pressure--The absolute aggregate partial vapor pressure, measured in pounds per square inch absolute, of all volatile organic compounds at the temperature of storage, handling, or processing.

(107) [~~(104)~~] Unauthorized emissions--Emissions of any air contaminant except carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen that exceed any air emission limitation in a permit, rule, or order of the commission or as authorized by Texas Clean Air Act, §382.0518(g).

(108) [~~(105)~~] Upset event--An unplanned or unanticipated occurrence or excursion of a process or operation that results in unauthorized emissions.

(109) [~~(106)~~] Utility boiler--A boiler used to produce electric power, steam, or heated or cooled air, or other gases or fluids for sale.

(110) [~~(107)~~] Vapor combustor--A partially enclosed combustion device used to destroy volatile organic compounds by smokeless combustion without extracting energy in the form of process heat or steam. The combustion flame may be partially visible, but at no time does the device operate with an uncontrolled flame. Auxiliary fuel and/or a flame air control damping system that [~~, which~~] can operate at all times to control the air/fuel mixture to the combustor's flame zone, may be required to ensure smokeless combustion during operation.

(111) [~~(108)~~] Vapor-mounted seal--A primary seal mounted so there is an annular space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof or cover.

(112) [~~(109)~~] Vent--Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.

(113) [~~(110)~~] Visible emissions--Particulate or gaseous matter that can be detected by the human eye. The radiant energy from an open flame is considered to be a visible emission under this definition.

(114) [~~(111)~~] Volatile organic compound--As defined in 40 Code of Federal Regulations §51.100(s), except §51.100(s)(2) - (4), as amended on November 29, 2004 (69 FR 69290 [~~- 69304~~]).

(115) [~~(112)~~] Volatile organic compound (VOC) water separator--Any tank, box, sump, or other container in which any VOC, floating on or contained in water entering such tank, box, sump, or other container, is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 30, 2005.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: August 14, 2005
For further information, please call: (512) 239-6087

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SUBCHAPTER F. EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP, AND SHUTDOWN ACTIVITIES

DIVISION 1. EMISSIONS EVENTS

30 TAC §101.201

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.014, concerning Emissions Inventory, which authorizes the commission to require submittal of emissions data; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events; and §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions of air contaminants except as authorized by commission by rule or order.

The proposed amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.0215, and 382.0216.

§101.201. Emissions Event Reporting and Recordkeeping Requirements.

(a) The following requirements for reportable emissions events [~~shall~~] apply.

(1) As soon as practicable, but not later than 24 hours after the discovery of an emissions event, the owner or operator of a regulated entity [~~facility~~] shall:

(A) (No change.)

(B) notify the commission office for the region in which the regulated entity [~~facility~~] is located, and all appropriate local air pollution control agencies with jurisdiction, if the emissions event is reportable.

(2) The notification for reportable emissions events for each regulated entity [~~facility~~], except for boilers or combustion turbines referenced in the definition of reportable quantity (RQ) in §101.1 of this title (relating to Definitions) must [~~shall~~] at a minimum, identify for each facility with emissions that exceed an RQ:

(A) the name of the owner or operator of the regulated entity [~~facility~~] experiencing an emissions event;

(B) the commission Regulated Entity Number and air account number of the regulated entity [~~facility~~] experiencing an emissions event, if a Regulated Entity Number and air [~~an~~] account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

[~~(C) the physical location of the point at which emissions to the atmosphere occurred;~~]

(C) [~~(D)~~] the common name of the process unit or area, the common name of the facility that [~~which~~] incurred the emissions event, and the common name of the emission point where the unauthorized emissions were released to the atmosphere;

(D) [~~(E)~~] the date and time of the discovery of the emissions event;

(E) [~~(F)~~] the estimated duration of the emissions event;

(F) [~~(G)~~] the compound descriptive type of the individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title that [~~, which~~] are known through common process knowledge, past engineering analysis, or testing to have equaled or exceeded the RQ;

(G) [~~(H)~~] the estimated total quantities [~~and the authorized emissions limits~~] for those compounds or mixtures described in subparagraph (F) [~~(G)~~] of this paragraph[~~, and, if applicable, the estimated opacity and the authorized opacity limit~~];

(H) [~~(I)~~] the best known cause of the emissions event at the time of the notification, if known; and

(I) [~~(J)~~] the actions taken, or being taken, to correct the emissions event and minimize the emissions.

(3) The notification for reportable emissions events for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title must [~~shall~~] identify for each facility with emissions that exceed an RQ:

(A) the name of the owner or operator of the regulated entity [~~facility~~] experiencing an emissions event;

(B) the commission Regulated Entity Number and air account number of the regulated entity [~~facility~~] experiencing an emissions event, if a Regulated Entity Number and air [~~an~~] account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

[~~(C) the physical location of the point from which the opacity occurred;~~]

(C) [~~(D)~~] the best known cause of the emissions event, if known at the time of notification;

(D) [~~(E)~~] the common name of the process unit or area, the common name [~~and the agency-established facility identification number~~] of the facility that experienced the emissions event, and the common name [~~and the agency-established emission point number~~] where the unauthorized emissions were released to the atmosphere[~~. Owners or operators of those facilities and emission points for which the agency has not established facility identification numbers or emission point numbers are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report~~];

(E) [~~(F)~~] the date and time of the discovery of the emissions event;

(F) [~~(G)~~] the estimated duration or expected duration of the emissions event;

(G) [~~(H)~~] the estimated opacity; and

[~~(I) the authorized opacity limit for the source having the emissions event; and~~]

(H) [~~(J)~~] the actions taken, or being taken, to correct the emissions event and minimize the emissions.

(4) The owner or operator of a regulated entity [~~facility~~] experiencing an emissions event must provide, in writing, additional or more detailed information on the emissions event when requested by the executive director or any air pollution control agency with jurisdiction, within the time frames established in the request.

(5) The owner or operator of a regulated entity [~~facility~~] experiencing a reportable emissions event that [~~which~~] also requires an initial notification under §327.3 of this title (relating to Notification Requirements) may satisfy the initial notification requirements of this section by complying with the requirements under §327.3 of this title.

(b) The owner or operator of a regulated entity [~~facility~~] experiencing an emissions event shall create a final record of all reportable and non-reportable emissions events as soon as practicable, but no later than two weeks after the end of an emissions event. Final records must [~~shall~~] be maintained on-site for a minimum of five years and be made readily available upon request to commission staff or personnel of any air pollution program with jurisdiction. If a regulated entity [~~site~~] is not normally staffed, records of emissions events may be maintained at the staffed location within Texas that is responsible for the day-to-day operations of the regulated entity [~~site~~]. [~~Such records shall identify:~~]

(1) The final record of a reportable emissions event must identify for each facility:

(A) [~~(1)~~] the name of the owner or operator of the regulated entity [~~facility~~] experiencing an emissions event;

(B) [~~(2)~~] the commission Regulated Entity Number and air account number of the regulated entity [~~facility~~] experiencing an emissions event, if a Regulated Entity Number and air [~~the~~] account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

(C) [~~(3)~~] the physical location of the point at which emissions to the atmosphere occurred;

(D) [~~(4)~~] the common name of the process unit or area, the common name and the agency-established facility identification number of the facility that experienced the emissions event, and the common name and the agency-established emission point number where the unauthorized emissions were released to the atmosphere. Owners or operators of those facilities and emission points that [~~for which~~] the agency has not established facility identification numbers or emission point numbers for are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report.

(E) [~~(5)~~] the date and time of the discovery of the emissions event;

(F) [~~(6)~~] the estimated duration of the emissions event;

(G) [~~(7)~~] the compound descriptive type of all individually listed compounds or mixtures of air contaminants[~~,~~] in the definition of RQ in §101.1 of this title, by facility, that [~~which~~] are known through common process knowledge or past engineering analysis or testing to have been released during the emissions event, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period, are not required to be specifically listed in the report, instead these compounds or mixtures of air contaminants may be identified together as "other";

(H) [~~(8)~~] the estimated total quantities for those compounds or mixtures described in subparagraph (G) [~~paragraph (7)~~] of this paragraph [~~subsection~~], the preconstruction authorization number or rule citation of the standard permit, permit by rule, or rule governing the regulated entity [~~facility~~] involved in the emissions event, authorized emissions limits for the facility involved in the emissions events, [~~and, if applicable, the estimated opacity and authorized opacity limit,~~] except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title which record only the authorized opacity limit and the estimated opacity during the emissions event. Methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized. Estimated emissions from compounds or mixtures of air contaminants that are identified as "other" under subparagraph (G) of this paragraph, are not required for each individual compound or mixture of air contaminants, however, a total estimate of emissions must be provided for the category identified as "other";

(I) [~~(9)~~] the basis used for determining the quantity of air contaminants emitted, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title;

(J) [~~(10)~~] the best known cause of the emissions event at the time of reporting;

(K) [~~(11)~~] the actions taken, or being taken, to correct the emissions event and minimize the emissions; and

(L) [~~(12)~~] any additional information necessary to evaluate the emissions event.

(2) Records of non-reportable emissions events must identify:

(A) the name of the owner or operator of the regulated entity experiencing an emissions event;

(B) the commission Regulated Entity Number and air account number of the regulated entity experiencing an emissions event, if a Regulated Entity Number and air account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

(C) the physical location of the point at which emissions to the atmosphere occurred;

(D) the common name of the process unit or area, the common name of the facility that experienced the emissions event, and the common name of the emission point where the unauthorized emissions were released to the atmosphere;

(E) the date and time of the discovery of the emissions event;

(F) the estimated duration of the emissions event;

(G) the compound descriptive type of the individually listed compounds or mixtures of air contaminants, by facility, in the definition of RQ in §101.1 of this title, that are known through common process knowledge, past engineering analysis, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title and that were unauthorized. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period, are not required to be specifically listed in the report, instead these compounds or mixtures of air contaminants may be identified together as "other";

(H) the estimated total quantities and the authorized emissions limits for those compounds or mixtures described in subparagraph (G) of this paragraph. Methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized. Estimated emissions from compounds or mixtures of air contaminants that are identified as "other" under subparagraph (G) of this paragraph, are not required for each individual compound or mixture of air contaminants, however, a total estimate of emissions must be provided for the category identified as "other";

(I) the best known cause of the emissions event at the time of recording; and

(J) any additional information necessary to evaluate the emissions event.

(c) For all reportable emissions events, if the information required in subsection (b) of this section differs from the information provided in the 24-hour notification under subsection (a) of this section, the owner or operator of the regulated entity [~~facility~~] shall submit a copy of the final record to the commission office for the region in which the regulated entity [~~facility~~] is located and to appropriate local air pollution agencies with jurisdiction no later than two weeks after the end of the emissions event. If the owner or operator does not submit a record under this subsection, the information provided in the 24-hour notification under subsection (a) of this section will be the final record of the emissions event, provided the initial notification was submitted electronically in accordance with subsection (g) of this section.

(d) The owner or operator of a boiler or combustion turbine, as defined in §101.1 of this title, fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight, or gaseous fuels other than natural gas, provided the hazardous air pollutants or highly reactive volatile organic compound content of the fuel does not exceed 0.02% by weight, that is equipped with a continuous emission monitoring system that completes a minimum of one operating cycle (sampling, analyzing, and data

recording) for each successive 15-minute interval, and is required to submit excess emission reports by other state or federal requirements, is exempt from creating, maintaining, and submitting final records of reportable and non-reportable emissions events of the boiler or combustion turbine under subsections (b) and (c) of this section as long as the notice submitted under subsection (a) of this section contains the information required under subsection (b) of this section.

(e) [An owner or operator of a facility has an excess opacity event when it has opacity reading(s) equal to or exceeding 15 additional percentage points above the applicable opacity limit, averaged over a six-minute period.] As soon as practicable, but not later than 24 hours after the discovery of an excess opacity event, as defined in §101.1 of this title, where the owner or operator was not already required to provide a notification under subsection (a)(2) or (3) of this section, the owner or operator shall notify the commission office for the region in which the regulated entity [facility] is located, and all appropriate local air pollution control agencies with jurisdiction. In the notification, the owner or operator shall identify:

(1) the name of the owner or operator of the regulated entity [facility] experiencing the excess opacity event;

(2) the commission Regulated Entity Number and air account number of the regulated entity [facility] experiencing an [excess] opacity event, if a Regulated Entity Number and air [an] account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

(3) - (8) (No change.)

(9) the best known cause of the excess opacity event[,] at the time of the notification [if known]; and

(10) (No change.)

(f) The owner or operator of any regulated entity [facility] subject to the provisions of this section shall perform, upon request by the executive director or any air pollution control agency with jurisdiction, a technical evaluation of each emissions event. The evaluation must [shall] include at least an analysis of the probable causes of each emissions event and any necessary actions to prevent or minimize recurrence. The evaluation must [shall] be submitted in writing to the executive director and to the appropriate local air pollution agencies with jurisdiction within 60 days from the date of request. The 60-day period may be extended by the executive director.

(g) On and after January 1, 2003, notifications and reports required in subsections (c) and (e) of this section must [shall] be submitted electronically to the commission using the electronic forms provided by the commission. On and after January 1, 2004, notifications required in subsection (a) of this section must [shall] be submitted electronically to the commission using electronic forms provided by the commission. Notwithstanding the requirement to report initial notifications electronically after January 1, 2004, the owner or operator of a regulated entity [facility] experiencing a reportable emissions event that [, which] also requires an initial notification under §327.3 of this title, is not required to report the event electronically under this subsection provided the owner or operator complies with the requirements under §327.3 of this title and in subsections (a) and (c) of this section. Owners and operators must report emissions events electronically by using an online form on the commission's secure Web [web] server. In the event the commission's server is unavailable due to technical failures or scheduled maintenance, events may be reported via facsimile to the appropriate regional office. The commission will provide an alternative means of notification in the event that the commission's electronic reporting system is inoperative. Electronic notification and reporting is not required for small businesses that [which] meet the small business definition in Texas Clean Air Act [TCAA], §382.0365(g)(2) and to appropriate local air pollution agencies with jurisdiction. Small businesses shall provide notifications and reporting by any viable means that [which] meet the time frames required by this section.

(h) Annual emissions event reporting: on or before March 31 of each calendar year or as directed by the executive director, each owner or operator of a regulated entity, as defined in §101.1 of this title that are subject to reporting under §101.10 of this title, and those that are not subject to reporting under §101.10 of this title, but are located in nonattainment, maintenance, early action compact areas, Nueces County, and San Patricio County, that experienced at least one emissions event during the calendar year shall report to the executive director, and all appropriate local air pollution control agencies with jurisdiction, the following: [In the event the owner or operator of a facility fails to report as required by subsection (a)(2) or (3), (b), or (e) of this section, the commission will initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply where an owner or operator reports an emissions event and the report was incomplete, inaccurate, or untimely, unless the owner or operator knowingly or intentionally falsified the information in the report.]

(1) the number of reportable and non-reportable emissions events experienced at the regulated entity by facility;

(2) the estimated total quantities for all compounds or mixtures of air contaminants, by compound or mixture, in the definition of RQ in §101.1 of this title that, by facility, were emitted during emissions events at the regulated entity except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title, that must report only the estimated opacities during the emissions events and durations of unauthorized opacity. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than one pound in a 24-hour period, are not required to be included in the report. Methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized; and

(3) owners and operators of regulated entities that are not subject to reporting under §101.10 of this title must provide annual emissions event reporting electronically by using an online form on the commission's secure Web server. The commission will provide an alternative means of reporting in the event that the commission's electronic reporting system is inoperative. If the commission's server is unavailable due to technical failures or scheduled maintenance, the annual reports may be provided through alternative means to the executive director. Annual electronic reporting is not required for small businesses that meet the small business definition in Texas Clean Air Act, §382.0365(g)(2) and to appropriate local air pollution agencies with jurisdiction. Small businesses shall provide annual reporting by any viable means that meet the time frames required by this section.

(4) owners and operators of regulated entities that are subject to reporting under §101.10 of this title must provide the information required by this subsection as part of their reporting under §101.10 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 30, 2005.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: August 14, 2005
For further information, please call: (512) 239-6087

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DIVISION 2. MAINTENANCE, STARTUP, AND SHUTDOWN ACTIVITIES

30 TAC §101.211

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.014, concerning Emissions Inventory, which authorizes the commission to require submittal of emissions data; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events; and §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions of air contaminants except as authorized by commission by rule or order.

The proposed amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.0215, and 382.0216.

§101.211. Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements.

(a) The owner or operator of a regulated entity [~~facility~~] conducting a scheduled maintenance, startup, or shutdown activity shall notify the commission office for the region in which the regulated entity [~~facility~~] is located and all appropriate local air pollution control agencies with jurisdiction at least ten days prior to any scheduled maintenance, startup, or shutdown activity that [~~which~~] is expected to cause an unauthorized emission that [~~which~~] equals or exceeds the reportable quantity (RQ) as defined in §101.1 of this title (relating to Definitions) in any 24-hour period and/or an activity where the owner or operator expects only an excess opacity event as defined in §101.1 of this title [~~that is subject to §101.201(e) of this title (relating to Emissions Event Reporting and Recordkeeping Requirements)~~]. If notice cannot be given ten days prior to a scheduled maintenance, startup, or shutdown activity, notification must [~~shall~~] be given as soon as practicable prior to the scheduled activity. Maintenance, startup, or shutdown activities where the actual emissions exceed the emissions in the notification by more than an RQ or for which a notification was not submitted prior to the activity are emissions events. Excess opacity events where unauthorized emissions result are emissions events. Owners and operators of a regulated entity with facilities that exceed the emissions or opacity estimate submitted in the notification or experience unauthorized emissions during an expected excess opacity event shall report such events as emissions events in accordance with the requirements in §101.201 of this title and §101.222 of this title (relating to Demonstrations).

(1) The notification for a scheduled maintenance, startup, or shutdown activity, except for boilers and combustion turbines referenced in the definition of RQ in §101.1 of this title, must [~~shall~~] identify:

(A) (No change.)

(B) the commission Regulated Entity Number and air account number of the regulated entity [~~facility~~], if a Regulated Entity Number and air [~~an~~] account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

(C) - (E) (No change.)

(F) the common name of the process unit or area, the common name and the agency-established facility identification number of the facility that will be involved in the emissions activity [~~experienced the emissions event~~], and the common name and the agency-established emission point number where the unauthorized emissions may be [~~were~~] released to the atmosphere. Owners or operators of those facilities and emission points that [~~for which~~] the agency has not established facility identification numbers or emission point numbers for are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report;

(G) (No change.)

(H) the compound descriptive type of the individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title, by facility, that [~~which~~] through common process knowledge or past engineering analysis or testing are expected to equal or exceed the RQ. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period, are not required to be specifically listed in the report, instead these compounds or mixtures of air contaminants may be identified together as "other";

(I) the estimated total quantities for those compounds or mixtures described in subparagraph (H) of this paragraph, the preconstruction authorization number or rule citation of the standard permit, permit by rule, or rule governing the regulated entity [~~facility~~] involved in the activity, authorized emissions limits for the facility involved in the emissions activity, and, if applicable, the estimated opacity and the authorized opacity limit. Methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized. Estimated emissions from compounds or mixtures of air contaminants that are identified as "other" under subparagraph (H) of this paragraph, are not required for each individual compound or mixture of air contaminants, however, a total estimate of emissions must be provided for the category identified as "other";

(J) - (K) (No change.)

(2) The notification for a scheduled maintenance, startup, or shutdown activity involving a boiler or combustion turbine referenced in the definition of RQ in §101.1 of this title, or where the owner or operator expects only an excess opacity event and the owner or operator was not already required to provide a notification under paragraph (1) of this subsection, must [~~shall~~] identify:

(A) (No change.)

(B) the commission Regulated Entity Number and air account number of the regulated entity [~~facility~~], if a Regulated Entity Number and air [~~an~~] account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

(C) - (D) (No change.)

(E) the common name of the process unit or area, the common name and the agency-established facility identification number of the facility that experienced the excess opacity event, and the common name and the agency-established emission point number where the excess opacity event occurred. Owners or operators of those facilities and emission points that [~~for which~~] the agency has not established facility identification numbers or emission point numbers for are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report;

(F) - (I) (No change.)

(b) The owner or operator of a regulated entity [~~facility~~] conducting a scheduled maintenance, startup, or shutdown activity shall create a final record of all scheduled maintenance, startup, and shutdown activities with unauthorized emissions, or with opacity exceedances from boilers and combustion turbines referenced in the definition of RQ in §101.1 of this title. The final record must [~~shall~~] be created as soon as practicable, but no later than two weeks after the end of each scheduled activity. Final records must [~~shall~~] be maintained on-site for a minimum of five years and be made readily available upon request to commission staff or personnel of any air pollution program with jurisdiction. If a regulated entity [~~site~~] is not normally staffed, records of scheduled maintenance, startup, and shutdown activities may be maintained at the staffed location within Texas that is responsible for day-to-day operations of the regulated entity [~~site~~]. Such scheduled activity records must [~~shall~~] identify:

(1) for owners and operators of regulated entities that were required to notify under subsection (a) of this section:

(A) [~~(1)~~] the name of the owner or operator;

(B) [~~(2)~~] the commission Regulated Entity Number and air account number of the regulated entity [~~facility~~], if a Regulated Entity Number and air [~~an~~] account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

(C) [~~(3)~~] the physical location of the scheduled point at which emissions from the maintenance, startup, or shutdown activity will occur;

(D) [~~(4)~~] the type of scheduled maintenance, startup, or shutdown activity and the reason for the scheduled activity;

(E) [~~(5)~~] the common name of the process unit or area, the common name and the agency-established facility identification number of the facility that experienced the emissions activity [~~event~~], and the common name and the agency-established emission point number where the unauthorized emissions were released to the atmosphere. Owners or operators of those facilities and emission points that [~~for which~~] the agency has not established facility identification numbers or emission point numbers for are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report;

(F) [~~(6)~~] the date and time of the scheduled maintenance, startup, or shutdown activity;

(G) [~~(7)~~] the duration of the scheduled maintenance, startup, or shutdown activity;

(H) [~~(8)~~] the compound descriptive type of all individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title, by facility, that [~~which~~] are known through common process knowledge or past engineering analysis or testing to have been released during the scheduled maintenance, startup, or shutdown activity, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period, are not required to be specifically listed in the report instead these compounds or mixtures of air contaminants may be identified together as "other";

(I) [~~(9)~~] the estimated total quantities and the authorized emissions limits for those compounds or mixtures described in subparagraph (H) of this paragraph [~~paragraph (8) of this subsection~~] , the preconstruction authorization number or rule citation of the standard permit, permit by rule, or rule governing the regulated entity [~~facility~~] involved in the scheduled maintenance, startup, or shutdown activity, authorized emissions limits for the facility involved in the scheduled maintenance, startup, or shutdown activity, and, if applicable, the estimated opacity and authorized opacity limit, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title that [~~which~~] record only the authorized opacity limit and the estimated opacity during the emissions event . Methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized. Estimated emissions from compounds or mixtures of air contaminants that are identified as "other" under subparagraph (H) of this paragraph are not required for each individual compound or mixture of air contaminants, however, a total estimate of emissions must be provided for the category identified as "other";

(J) [~~(10)~~] the basis used for determining the quantity of air contaminants to be emitted, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title; and

(K) [~~(11)~~] the actions taken to minimize the emissions from the scheduled maintenance, startup, or shutdown activity.

(2) for owners and operators of regulated entities that were not required to notify under subsection (a) of this section:

(A) the name of the owner or operator;

(B) the commission Regulated Entity Number and air account number of the regulated entity if a Regulated Entity Number and air account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

(C) the physical location of the scheduled point at which emissions from the maintenance, startup, or shutdown activity will occur;

(D) the type of scheduled maintenance, startup, or shutdown activity and the reason for the scheduled activity;

(E) the common name of the process unit or area, the common name and the agency-established facility identification number of the facility that experienced the emissions activity , and the common name and the agency-established emission point number where the unauthorized emissions were released to the atmosphere. Owners or operators of those facilities and emission points that the agency has not established facility identification numbers or emission point numbers for are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report;

(F) the date and time of the scheduled maintenance, startup, or shutdown activity;

(G) the duration of the scheduled maintenance, startup, or shutdown activity;

(H) the compound descriptive type of the individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title, that are known through common process knowledge, past engineering analysis, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title and that were unauthorized. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period, are not required to be specifically listed in the record instead these compounds or mixtures of air contaminants may be identified together as "other"; and

(I) the estimated total quantities and the authorized emissions limits for those compounds or mixtures described in subparagraph (H) of this paragraph. Methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized. Estimated emissions from compounds or mixtures of air contaminants that are identified as "other" under subparagraph (H) of this paragraph are not required for each individual compound or mixture of air contaminants, however, a total estimate of emissions must be provided for the category identified as "other".

(c) For any scheduled maintenance, startup, or shutdown activity for which an initial notification was submitted under subsection (a) of this section, which does not provide all [~~if~~] the information required in subsection (b) of this section or if the information has changed from the prior notification [~~differs from the information provided under subsection (a) of this section~~], the owner or operator of the regulated entity [~~facility~~] shall submit a [~~copy of the~~] final record as required by subsection (b) of this section to the commission office for the region in which the regulated entity [~~facility~~] is located and to appropriate local air pollution agencies with jurisdiction no later than two weeks after the end of the scheduled activity. If the owner or operator does not submit a record under this subsection, the information provided under subsection (a) of this section will be the final record of the scheduled activity.

(d) The owner or operator of a boiler or combustion turbine as defined in §101.1 of this title fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight, or gaseous fuels other than natural gas, provided the hazardous air pollutants or highly reactive volatile organic compound content of the fuel does not exceed 0.02% by weight, that is equipped with a continuous emission monitoring system that completes a minimum of one operating cycle (sampling, analyzing, and data recording) for each successive 15-minute interval, and is required to submit excess emissions reports by other state or federal regulations, is exempt from creating, maintaining, and submitting final records of scheduled maintenance, startup, and shutdown activities with unauthorized emissions under subsections (b) and (c) of this section, as long as the notice submitted under subsection (a) of this section contains the information required under subsection (b) of this section.

(e) The executive director may specify the amount, time, and duration of emissions that will be allowed during the scheduled maintenance, startup, or shutdown activity. The owner or operator of any source subject to the provisions of this section shall submit a technical plan for any scheduled maintenance, startup, or shutdown activity when requested by the executive director with a copy to the appropriate local air pollution agencies with jurisdiction. The plan must [~~shall~~] contain a detailed explanation of the means by which emissions will be minimized during the scheduled maintenance, startup, or shutdown activity. For those emissions that [~~which~~] must be released into the atmosphere, the plan must [~~shall~~] include the reasons such emissions cannot be reduced further.

(f) For annual scheduled maintenance, startup, and shutdown activity reporting on or before March 31 of each calendar year, or as directed by the executive director, each owner or operator of a regulated entity site, as defined in §101.1 of this title that are subject to reporting under §101.10 of this title, and those that are not subject to reporting under §101.10 of this title but are located in nonattainment, maintenance, early action compact areas, Nueces County, and San Patricio County, that experienced at least one scheduled maintenance, startup, and shutdown activity during the calendar year must report to the executive director, and all appropriate local air pollution control agencies with jurisdiction:

(1) the number of reportable and non-reportable scheduled maintenance, startup, and shutdown activities experienced at the regulated entity by facility; and

(2) the estimated total quantities for all compounds or mixtures, by compound or mixture, of air contaminants, in the definition of RQ in §101.1 of this title that, by facility, emitted during scheduled maintenance, startup, and shutdown activities at the regulated entity, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title that must report only the estimated opacities during the scheduled maintenance, startup, and shutdown activity events and durations of unauthorized opacity. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than one pound in a 24-hour period, are not required to be included in the report. Methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized; and

(3) owners and operators of regulated entities that are not subject to reporting under §101.10 of this title must report annual total emissions resulting from all scheduled maintenance, startup, and shutdown activities electronically by using an online form on the commission's secure Web server. The commission will provide an alternative means of reporting in the event that the commission's electronic reporting system is inoperative. If the commission's server is unavailable due to technical failures or scheduled maintenance, the annual reports may be reported to the executive director. Annual electronic reporting is not required for small businesses that meet the small business definition in Texas Clean Air Act, §382.0365(g)(2) and to appropriate local air pollution agencies with jurisdiction. Small businesses shall provide annual reporting by any viable means that meet the time frames required by this section; and

(4) owners and operators of regulated entities that are subject to reporting under §101.10 of this title must provide the information required by this subsection as part of their reporting under §101.10 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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DIVISION 3. OPERATIONAL REQUIREMENTS, DEMONSTRATIONS, AND ACTIONS TO REDUCE EXCESSIVE EMISSIONS

30 TAC §§101.221 - 101.223

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.014, concerning Emissions Inventory, which authorizes the commission to require submittal of emissions data; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events; and §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions of air contaminants except as authorized by commission by rule or order.

The proposed amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.0215, and 382.0216.

§101.221. Operational Requirements.

(a) All pollution emission capture equipment and abatement equipment must [~~shall~~] be maintained in good working order and operated properly during facility operations. Emission capture and abatement equipment must [~~shall~~] be considered to be in good working order and operated properly when operated in a manner such that each facility is operating within authorized emission limitations.

(b) - (c) (No change.)

(d) Sources emitting air contaminants that [~~which~~] cannot be controlled or reduced due to a lack of technological knowledge may be exempt from the applicable rules and regulations when so determined and ordered by the commission. The commission may specify limitations and conditions as to the operation of such exempt sources. The commission will not exempt sources from complying with any federal requirements, including New Source Performance Standards (40 Code of Federal Regulations Part 60) and National Emission Standards for Hazardous Air Pollutants (40 Code of Federal Regulations Parts 61 and 63).

(e) The owner or operator of a facility has the burden of proof to demonstrate that the criteria identified in §101.222(a) and (b) of this title (relating to Demonstrations) for emissions events, or in §101.222(c) of this title for scheduled maintenance, startup, or shutdown activities are satisfied for each occurrence of unauthorized emissions. The owner or operator of a facility has the burden of proof to demonstrate that the criteria identified in §101.222(d) of this title for excess opacity events, as defined in §101.1 of this title (relating to Definitions), or in §101.222(e) of this title for excess opacity events resulting from scheduled maintenance, startup, or shutdown activities are satisfied for each excess opacity event.

(f) (No change.)

[~~(g) This section expires on January 15, 2006, unless the commission submits a revised version of this section to the Environmental Protection Agency (EPA) for review and approval into the Texas state implementation plan. If the commission submits a revised version of this section, this section expires on June 30, 2006.~~]

§101.222. Demonstrations.

(a) (No change.)

(b) Non-excessive emissions events. Emissions events that are determined not to be excessive are subject to an affirmative defense to all claims in enforcement actions brought for these events, other than claims for administrative technical orders and actions for injunctive relief, [~~and~~] for which the owner or operator proves all of the following:

(1) the owner or operator complies with the requirements of §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements). In the event the owner or operator of a facility fails to report as required by §101.201(a)(2) or (3), (b), or (e) of this title, the commission will initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply when there are minor omissions or inaccuracies that do not impair the commission's ability to review the event according to this rule, unless the owner or operator knowingly or intentionally falsified the information in the report;

(2) (No change.)

(3) the unauthorized emissions did not stem from any activity or event that could have been foreseen and avoided, and could not have been reasonably avoided by technically feasible [~~good~~] design, operation, and maintenance practices consistent with good engineering practice;

(4) - (9) (No change.)

(10) the percentage of a facility's total annual operating hours during which unauthorized emissions occurred was not unreasonably high; [~~and~~]

(11) the unauthorized emissions did not cause or contribute to an exceedance of the national ambient air quality standards (NAAQS), prevention of significant deterioration (PSD) increments, or to a condition of air pollution; and [~~.~~]

(12) the unauthorized emissions were not maintenance, startup, or shutdown emissions that were not reported under §101.211(a) of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), but could reasonably have been reported.

(c) Scheduled [~~maintenance,~~] startup[~~,~~] or shutdown activity. Emissions from a scheduled [~~maintenance,~~] startup[~~,~~] or shutdown activity are subject to an affirmative defense to all claims in enforcement actions brought for these activities, other than claims for administrative technical orders and actions for injunctive relief, for which [~~required to be included in a permit under Texas Health and Safety Code, §382.0518 or §382.0519, a standard permit under §382.05195, or a permit by rule under §382.05196 unless~~] the owner or operator proves all of the following:

(1) the owner or operator complies with the requirements of §101.211 of this title [~~(relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements)~~]. Failure to report information that does not impair the commission's ability to review the activity will not result in enforcement action and loss of opportunity to claim the affirmative defense;

(2) the periods of unauthorized emissions from the [~~any scheduled maintenance, startup, or shutdown~~] activity could not have been prevented through planning and design;

(3) the unauthorized emissions from the [~~any scheduled maintenance, startup, or shutdown~~] activity were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(4) if the unauthorized emissions from the [~~any scheduled maintenance, startup, or shutdown~~] activity were caused by a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(5) (No change.)

(6) the frequency and duration of operation in a scheduled [~~maintenance,~~] startup[~~,~~] or shutdown mode resulting in unauthorized emissions were minimized;

(7) (No change.)

(8) the owner or operator actions during the period of unauthorized emissions from the [~~any scheduled maintenance, startup, or shutdown~~] activity were documented by contemporaneous operating logs or other relevant evidence; and

(9) (No change.)

(d) Excess opacity events. Excess opacity events that are subject to §101.201(e) of this title, or for other opacity events where there was no emissions event, are subject to an affirmative defense to all claims in enforcement actions for these events, other than claims for administrative technical orders and actions for injunctive relief, [~~and~~] for which the owner or operator proves all of the following:

(1) the owner or operator complies with the requirements of §101.201 of this title. Failure to report information that does not impair the commission's ability to review the event will not result in enforcement action and loss of opportunity to claim the affirmative defense;

(2) the opacity did not stem from any activity or event that could have been foreseen and avoided, and could not have been reasonably avoided by technically feasible [~~good~~] design, operation, and maintenance practices consistent with good engineering practice;

(3) - (9) (No change.)

(e) Opacity events resulting from scheduled [~~maintenance,~~] startup[~~,~~] or shutdown activity. Excess opacity events, or other opacity events where there was no emissions event, that result from a scheduled [~~maintenance,~~] startup [~~,~~] or shutdown activity are subject to an affirmative defense to all claims in enforcement actions brought for these activities, other than claims for administrative technical orders and actions for injunctive relief, for which [~~the opacity requirements of §111.111(a) of this title (relating to Requirements for Specified Sources) unless~~] the owner or operator proves all of the following:

(1) the owner or operator complies with the requirements of §101.211 of this title. Failure to report information that does not impair the commission's ability to review the event will not result in enforcement action and loss of opportunity to claim the affirmative defense;

(2) - (5) (No change.)

(6) the frequency and duration of operation in a [~~scheduled maintenance,~~] startup[~~,~~] or shutdown mode resulting in opacity were minimized;

(7) - (9) (No change.)

(f) Obligations. Subsections (c) and (e) of this section do not remove any obligations to comply with any other existing permit, rule, or order provisions that are applicable to a scheduled maintenance, startup, or shutdown activity, including complying with any federal permitting requirements.

(g) (No change.)

(h) Maintenance activity. Emissions or opacity events from a maintenance activity that have been reported or recorded in compliance with §101.211 of this title are subject to an affirmative defense to all claims in enforcement actions brought for these activities, other than claims for administrative technical orders and actions for injunctive relief, for which the owner or operator proves all of the criteria listed in subsection (c)(1) - (9) of this section for emissions, or subsection (e)(1) - (9) of this section for opacity events except that, according to the following schedule, the affirmative defense will only apply to those emissions or opacity events from a maintenance activity that arises from sudden and reasonably unforeseeable events beyond the control of the operator that requires the immediate corrective action to restore normal operation: [~~This section expires on January 15, 2006, unless the commission submits a revised version of this section to the Environmental Protection Agency (EPA) for review and approval into the Texas state implementation plan. If the commission submits a revised version of this section, this section expires on June 30, 2006.~~]

(1) when the effective date of renewal, amendment, or issuance of any preconstruction permit associated with the facility as required by Texas Health and Safety Code, §382.0518, for which the application was submitted following the effective date of this section; or

(2) for all other facilities beginning two years after the effective date of this section.

§101.223. Actions to Reduce Excessive Emissions.

(a) The executive director will provide written notification to an owner or operator of a facility upon determination that a facility has had one or more excessive emissions events. The written notification must [~~shall~~] contain, at a minimum, a description of the emissions events that were determined to be excessive and the time period when those excessive emissions events were evaluated. Upon receipt of this notice, the owner or operator of the facility must take action to reduce emissions and shall either file a corrective action plan (CAP) or, if the emissions are sufficiently frequent, quantifiable, and predictable, in which case the owner or operator may file a letter of intent to obtain

authorization from the commission for emissions from such events, in lieu of a CAP.

(1) When a CAP is required, the owner or operator must submit a CAP to the commission office for the region and local air pollution agency with jurisdiction in which the facility is located within 60 days after receiving notification from the executive director that a facility has had one or more excessive emissions events. The 60-day period may be extended once for up to 15 days by the executive director. The CAP must [~~shall~~], at a minimum:

(A) identify the cause or causes of each excessive emissions event, including all contributing factors that led to each emissions event;

(B) - (D) (No change.)

(2) An owner or operator must obtain commission approval of a CAP no later than 120 days after the commission receives the first CAP submission from an owner or operator. If not disapproved within 45 days after initial filing, the CAP must [~~shall~~] be deemed approved. The owner or operator of a facility must respond completely and adequately, as determined by the executive director, to all written requests for information concerning its CAP within 15 days after the date of such requests, or by any other deadline specified in writing. An owner or operator of a facility may request written approval of a CAP, in which case the commission shall take final written action to approve or disapprove the plan within 120 days from the receipt of such request. Once approved, the owner or operator must implement the CAP in accordance with the approved schedule. The implementation schedule is enforceable by the commission. The commission may require the owner or operator to revise a CAP if the commission finds the plan, after implementation begins, to be inadequate to prevent or minimize emissions or emissions events. If the CAP is disapproved, or determined to be inadequate to prevent or minimize excessive emissions events, the executive director shall identify deficiencies in the CAP and state the reasons for disapproval of the CAP in a letter to the owner or operator. If the commission finds a CAP inadequate to prevent or minimize excessive emissions events after implementation begins, an owner or operator must file an amended CAP within 60 days after written notification by the executive director.

(3) (No change.)

(b) The executive director, after a review of the excessive emissions events determinations made at a regulated entity [~~site~~] as defined in §101.1 of this title (relating to Definitions), may forward these determinations to the commission requesting that it issue an order finding that the regulated entity [~~site~~] has chronic excessive emissions events. Orders issued by the commission under this section will [~~shall~~] be part of the entity's compliance history as provided in Chapter 60 of this title (relating to Compliance History). The commission may issue an order finding that a regulated entity [~~site~~] has chronic excessive emissions events after considering the following factors:

(1) the size, nature, and complexity of the regulated entity [~~site~~] operations;

(2) the frequency of emissions events at the regulated entity [~~site~~]; and

(3) the reason or reasons for excessive emissions event determinations at that regulated entity [~~site~~].

(c) (No change.)

(d) Nothing in this section will [~~shall~~] limit the commission's ability to bring enforcement actions for violations of the Texas Clean Air Act or rules promulgated thereunder, including enforcement actions to require actions to reduce emissions from excessive emissions events.

~~[(e) This section expires on January 15, 2006, unless the commission submits a revised version of this section to the Environmental Protection Agency (EPA) for review and approval into the Texas state implementation plan. If the commission submits a revised version of this section, this section expires on June 30, 2006.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.2, §15.6

The General Land Office (GLO) proposes to amend 31 TAC, Part 1, Chapter 15, relating to Coastal Area Planning, §15.2 relating to Definitions, and §15.6, relating to Concurrent Dune Protection and Beachfront Construction Standards. The proposed amendments update citations and make minor editorial corrections. These rule amendments have been undertaken as a result of the comprehensive review of the GLO's rules mandated by Texas Government Code §2001.039, and will ensure that the rules are clear, necessary, and updated.

The proposed amendment of §15.2(6) updates the definition of "Beach/Dune Rules." The definition currently refers to the Beach/Dune rules as §§15.1-15.10. Section 15.12 has been added to the Beach/Dune Rules, so the proposed amendment updates the definition to include §15.12.

The proposed amendment of §15.2(69) updates the definition of "Unique flora and fauna." The definition currently refers to endangered or threatened species listed "at" the Endangered Species Act of 1973 (Act) and/or Texas Parks and Wildlife Code Chapter 68. The proposed amendment clarifies that the species are not listed in these statutes, but are listed "pursuant to" the authority granted in these statutes. In addition, the proposed amendment corrects the citation to the Act, which currently reads "16 United States Code Annotated, §1531." The Act is codified in §§1531-1544, so the phrase "et seq." is added to indicate that the Act is codified in multiple sections.

The proposed amendment of §15.6(b) adds a period at the end of the sentence.

The proposed amendment of §15.6(c) and (d) updates the citation to the Coastal Coordination Council's rule related to Policies for Construction in the Beach/Dune System, which has been renumbered. The proposed amendments reflect the renumbering of 31 TAC §501.14(k)(2) to 31 TAC §501.26(b).

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the proposed rulemaking as a "major environmental rule." Under the Government Code, a "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. A regulatory analysis is required only when a major environmental rule exceeds a standard set by federal law, exceeds an express requirement of state law, exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the GLO. The proposed rulemaking will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, and is not adopted solely under the general powers of the GLO.

The GLO has reviewed these proposed rule amendments for consistency with the applicable goals and policies of the Coastal Management Program (CMP) and regulations of the Coastal Coordination Council (Council). The proposed amendments are consistent with 31 TAC §501.12, relating to Goals; and 31 TAC §501.26, relating to Policies for Construction in the Beach/Dune System, because the proposed amendments are non-substantive editorial corrections and updates to citations that do not change the meaning or effect of the existing rules.

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines, to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests.

Sam Webb, Deputy Commissioner for the Coastal Resources Program Area of the GLO, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended sections as the amendments constitute minor clarifications to the rules.

Sam Webb, Deputy Commissioner for the Coastal Resources Program Area of the GLO, has also determined that there will be no economic cost to persons required to comply with these regulations, as these amendments add no additional restrictions or requirements that did not already exist. The public will benefit from the proposed rule amendments because the amended rules will provide more clarity. There will be no effect on small businesses, and a local employment impact statement on these proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, *Texas Register* Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed under authority granted in the Open Beaches Act, Texas Natural Resources Code §61.011, which provides the Commissioner of the GLO the authority to adopt rules for the public beach easement; and the Dune Protection Act, Texas Natural Resources Code §63.121, which authorizes the Commissioner of the General Land Office to adopt rules for protection of critical dune areas.

The proposed amendments are necessary to implement Texas Natural Resources Code §33.204, and the Open Beaches Act and Dune Protection Act, Texas Natural Resources Code Chapters 61 and 63.

§15.2. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Beach/Dune Rules--31 TAC §§15.1-15.12 [~~15.10~~].

(7) - (68) (No change.)

(69) Unique flora and fauna--Endangered or threatened plant or animal species listed pursuant to [~~at~~] 16 United States Code Annotated, §1531 et seq., the Endangered Species Act of 1973, and/or the Parks and Wildlife Code, Chapter 68, or any plant or animal species that a local government has determined in their local beach/dune plan are rare or uncommon.

(70) (No change.)

§15.6. Concurrent Dune Protection and Beachfront Construction Standards.

(a) (No change.)

(b) Location of construction. Local governments shall require permittees to locate all construction as far landward as is practicable and shall not allow any construction which may aggravate erosion.

(c) Prohibition of erosion response structures. Local governments shall not issue a permit or certificate allowing construction of an erosion response structure. Notwithstanding the general prohibition on constructing erosion response structures, a local government may authorize the construction of a structural shore protection project that conforms with the policies of the Coastal Coordination Council promulgated in 31 TAC §501.26(b) [~~31 TAC §501.14(k)(2)~~]. However, a local government may issue a permit or certificate authorizing construction of a retaining wall, as defined in §15.2 of this title (relating

to Definitions), under the following conditions. These conditions only apply to the construction of a retaining wall; all other erosion response structures are prohibited.

(1) A local government shall not issue a permit authorizing the construction of a retaining wall within the area 200 feet landward of the line of vegetation.

(2) A local government may issue a permit authorizing construction of a retaining wall in the area more than 200 feet landward of the line of vegetation.

(d) Existing erosion response structures. In no event shall local governments issue permits or certificates authorizing maintenance or repair of an existing erosion response structure on the public beach or the enlargement or improvement of the structure within 200 feet landward of the natural vegetation line. Notwithstanding the general prohibition on maintaining or repairing erosion response structures, a local government may authorize the maintenance or repair of a structural shore protection project that conforms with the policies of the Coastal Coordination Council promulgated in 31 TAC §501.26(b) [~~31 TAC §501.14(k)(2)~~]. Also within 200 feet landward of the natural vegetation line, local governments shall not issue a permit or certificate allowing any person to maintain or repair an existing erosion response structure if the structure is more than 50% damaged, except under the following circumstances.

(1) When failure to repair the structure will cause unreasonable hazard to a public building, public road, public water supply, public sewer system, or other public facility immediately landward of the structure.

(2) When failure to repair the structure will cause unreasonable flood hazard to habitable structures because adjacent erosion response structures will channel floodwaters to the habitable structure.

(e) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200502697
Trace Finley
Policy Director
General Land Office
Earliest possible date of adoption: August 14, 2005
For further information, please call: (512) 475-1859

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SUBCHAPTER B. COASTAL EROSION PLANNING AND RESPONSE

31 TAC §§15.41, 15.42, 15.44

The Texas General Land Office (GLO) proposes to amend 31 TAC, Part 1, Chapter 15, relating to Coastal Area Planning, §15.41, relating to Evaluation Process for Coastal Erosion Studies and Projects, §15.42, relating to Funding Projects From the Coastal Erosion Response Account, and §15.44, relating to Beneficial Use of Dredged Materials.

The amendments are proposed pursuant to the Coastal Erosion Planning and Response Act (CEPRA), Texas Natural Resources Code, Chapter 33, Subchapter H, §§33.601 - 33.612. CEPRA requires the GLO to implement a program of coastal erosion avoidance, remediation, and planning. The proposed amendments are necessary to clarify evaluation criteria and procedures for proposed CEPRA projects. These rule amendments have been undertaken as a result of the comprehensive review of the GLO's rules mandated by Texas Government Code §2001.039 and statutory changes from the 79th Texas Legislature, and will ensure that the rules are clear, necessary, and updated.

The proposed amendment of the first sentence of §15.41 clarifies that the two-stage evaluation process described in §15.41 is intended to apply to those projects that are proposed by potential project partners, rather than those projects that are undertaken solely by the GLO.

The proposed amendment of §15.41(1)(A)(xiii)(VI) adds a category for identification of the type of project proposed by potential project partners. The category includes projects for removal of debris or structures, or relocation of structures from the public beach, with a shared project cost determined by the Commissioner of the GLO. The 79th Legislature, 2005, provided authority for this type of project category in Senate Bill 517, amending Texas Natural Resources Code §33.603, effective September 1, 2005.

The proposed amendment of §15.41(1)(B) changes the order of the list of methods by which the GLO prefers to receive project goal summaries to put email first, because the GLO has determined that email is the quickest and most efficient method of delivery.

The proposed amendment of §15.41(1)(D)(viii) deletes one of the priority criteria for the review of proposed projects during the GLO's initial evaluation of project goal summaries. The criterion regarding "the economic benefits to the state relative to the cost to the state of the project" is unnecessary and does not serve the same purpose as the other criteria in subparagraph (D) because the GLO has determined that it cannot adequately determine the economic benefits to the state relative to the cost to the state for a proposed project. In addition, the criterion proposed for deletion is not one of the required criteria for evaluating proposed projects found in Texas Natural Resources Code §33.605(b). Therefore, the GLO has determined that this criterion serves no useful purpose and should be deleted.

The proposed amendments of §15.41(1)(E)(ii) and 15.41(2)(A) and (B) make it permissive, rather than required, for the GLO to invite a potential project partner to become a qualified project partner by entering into a project cooperation agreement to evaluate alternatives during the second stage of the evaluation process under §15.41(2). Section 15.41(2) currently requires the GLO and a potential project partner to enter into a project cooperation agreement to perform a cooperative evaluation of alternatives for addressing erosion problems. Upon entering into a project cooperation agreement, a potential project partner will become a qualified project partner. Through its experiences since these rules were promulgated, however, the GLO has found that it is sometimes unnecessary to enter into a project cooperation agreement to perform an evaluation of alternatives for every proposed project, because the GLO already has the necessary information through previous evaluations of alternatives for similar projects. In addition, the requirement to enter into a project cooperation agreement to perform an evaluation of alternatives during the second stage of project evaluation can make the evaluation process so lengthy that projects cannot be started in a timely manner, increasing the likelihood that construction will continue into bird and turtle nesting season. The typical CEPRA project is comprised of

preliminary engineering, permitting, final engineering design, and construction phases. Many time and resource constraints are encountered during the course of a project, including time required for permitting, bird and turtle nesting windows when construction is not allowed, and securing cost effective sand resources proximal to project locations. Although the CEPRA program continues to improve its processes for project evaluation, selection, and contracting, the minimum time frames for these elements are substantial. The proposed amendment of §15.41(2)(C)(ii) and (D) recognizes that the project partner may be either a potential project partner or a qualified project partner, depending on whether they have entered into a project cooperation agreement.

The proposed amendment of §15.42(a) clarifies that the funding requirements in §15.42 pertain to projects requested by qualified and potential project partners, rather than to projects or studies conducted solely by the GLO. In addition, the proposed amendment recognizes that the GLO and a project partner may or may not have entered into a cooperation agreement under §15.41(2) for the evaluation of alternatives. Section 15.42(a) currently provides that the GLO and a qualified project partner must amend their existing cooperation agreement to provide for funding under §15.42, since they are currently required to enter into a cooperation agreement for the purpose of evaluating erosion response project alternatives under §15.41(2). However, if the GLO and a potential project partner have opted to forego a project cooperation agreement to evaluate alternatives under the proposed changes to §15.41(2), then the proposed changes to §15.42 assure that they will enter into a project cooperation agreement for funding conditions and for management of the project before the GLO can fund the project. The last sentence of §15.42(a) is changed to remove the word "amended" to indicate that the project cooperation agreement may be either new or amended.

The proposed amendment of §15.42(b) removes the word "amended" before "project cooperation agreement," so that it is consistent with the proposed changes to §15.42(a).

The proposed amendment of §15.42(c) adds a reference to subsection (h) of Texas Natural Resources Code §33.603 in order to be consistent with the statutory change to Texas Natural Resources Code §33.603 by the 79th Legislature, 2005, in Senate Bill 517, effective September 1, 2005.

The proposed amendment of §15.44(d) updates the citation to the U.S. Army Corps of Engineers (USACE) publication regarding the beneficial use of dredged materials.

The proposed amendment of §15.44(e)(3) updates the citation for the listing of hazardous substances in the Code of Federal Regulations.

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 15, Subchapter B are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in CEPRA relating to coastal erosion studies or projects undertaken in cooperation with a qualified project partner under an agreement with the Commissioner of the GLO.

The proposed rulemaking is not subject to the Texas Coastal Management Program (CMP), Texas Natural Resources Code §33.2053 and 31 TAC §505.11, relating to the Actions and Rules Subject to the Coastal Management Program. Individual erosion response projects undertaken in compliance with these rules may be subject to the CMP, and consistency with the CMP will be individually determined at the appropriate stage of project planning.

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines, to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests.

Sam Webb, Deputy Commissioner for the Coastal Resources Program Area of the GLO, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended sections as the amendments constitute minor clarifications to the rules.

Sam Webb, Deputy Commissioner for the Coastal Resources Program Area of the GLO, has determined that there will be no economic cost to persons required to comply with these regulations, as these amendments add no additional restrictions or requirements that did not already exist. The public will benefit from the proposed rule amendments because the amended rules will provide more clarity. There will be no effect on small businesses, and a local employment impact statement on these proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, *Texas Register* Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed under the Texas Natural Resources Code, §33.602(c) that provides the Commissioner of the General Land Office with the authority to adopt rules necessary to implement Chapter 33, Subchapter H, Texas Natural Resources Code, concerning coastal erosion.

The proposed amendments are necessary to implement Texas Natural Resources Code §§33.601 - 33.612.

§15.41. Evaluation Process for Coastal Erosion Studies and Projects.

The General Land Office (Land Office) will evaluate potential projects proposed by potential project partners for funding from the coastal erosion response account (Account) based on a two-stage evaluation process as described in this section, including an initial evaluation of project goal summaries followed by a further evaluation of preferred alternatives.

(1) Initial evaluation of project goal summaries submitted to the Land Office by potential project partners.

(A) A potential project partner seeking funds from the Account must submit a project goal summary to the Land Office no later than July 1 immediately preceding the state fiscal biennium in which funding is sought; provided that the Land Office in its discretion may accept a project summary that will address an emergency situation after July 1. The project goal summary must include the following:

(i) - (xii) (No change.)

(xiii) a description of the type of project for which funding is sought from the Account, including an identification of the project as:

(I) - (III) (No change.)

(IV) any other coastal erosion response study or project with a 40% cost-sharing requirement; [~~or~~]

(V) a project for which funding is sought from the Account is a large-scale project without a shared project cost requirement in accordance with Texas Natural Resources Code, §33.603(f); or

(VI) a project for removal of debris or structures, or relocation of structures from the public beach with a cost-sharing requirement to be determined by the Land Office, in accordance with Texas Natural Resources Code, §33.603(b)(11) and (h).

(xiv) - (xv) (No change.)

(B) The Land Office will accept project goal summaries by:

(i) email sent to coastalprojects@glo.state.tx.us;

(ii) mail sent to the General Land Office, Attn: Director, Coastal Resources Program Area, Coastal Stewardship Division, P.O. Box 12873, Austin, TX 78711-2873; or

(iii) [~~(ii)~~] fax sent to (512) 475-0680 [~~; or~~]

~~*(iii)* email sent to coastalprojects@glo.state.tx.us~~].

(C) (No change.)

(D) After evaluation of proposed projects according to the criteria detailed in subparagraph (C) of this paragraph, the Land Office will further evaluate project goal summaries received based on the following priority criteria:

(i) - (vi) (No change.)

(vii) whether funding the proposed project will contribute to balance in the geographic distribution of benefits for coastal erosion response projects in Texas that are proposed or have received funding from the Account; and

~~*(viii)* the economic benefits to the state relative to the cost to the state of the project; and~~]

(viii) [~~(ix)~~] the cost of the proposed project in relation to the amount of money available in the Account.

(E) The Land Office will conduct the initial evaluation in consultation and coordination with the potential project partner, as deemed necessary by the Land Office. Based on the initial evaluation, the Land Office will designate proposed projects as either priority projects or alternative projects.

(i) (No change.)

(ii) If the Land Office's initial evaluation results in a designation of a proposed project as a priority project, the Land Office may [~~will~~] invite the potential project partner to continue to work cooperatively with the Land Office by becoming a qualified project partner.

(2) Evaluation of preferred alternatives with qualified project partners for priority projects.

(A) The Land Office may require the [~~and~~] potential project partner for a priority project to [~~must~~] enter into a project cooperation agreement before continuing [~~to continue~~] the evaluation process. Upon entering into a project cooperation agreement, the potential project partner will become a qualified project partner. The Land Office may require a [~~and~~] qualified project partner to [~~will~~] cooperatively evaluate alternatives for addressing the erosion problem(s) identified in the project goal summary of a priority project.

(B) The project cooperation agreement with the qualified project partner may [~~will~~] explicitly define the activities to be undertaken by the Land Office and the qualified project partner in the evaluation of alternatives. Funds from a source other than the Account expended by a qualified project partner in conformance with the project cooperation agreement can be used to offset the qualified project partner's cost-sharing requirement. The Land Office may, at its sole discretion, fund studies or activities that are part of the alternatives-evaluation process.

(C) During the alternatives-evaluation process, the Land Office will evaluate projects based on the following criteria:

(i) (No change.)

(ii) whether the potential or qualified project partner has already made or received a binding commitment to fund all or a portion of a given project.

(D) The Land Office will determine whether a potential or qualified project partner should receive funds from the Account based on the final prioritization of preferred alternatives according to the considerations detailed in subparagraph (C) of this paragraph.

(E) (No change.)

§15.42. Funding Projects From the Coastal Erosion Response Account.

(a) If the Land Office determines that a project requested by either a qualified project partner or potential project partner should receive funds from the Account, the Land Office and the qualified project partner will amend the project cooperation agreement that was entered into earlier in the evaluation process, or the Land Office and the potential project sponsor will enter into a project cooperation agreement, in which case the potential project partner will become a qualified project partner. The Land Office shall explicitly describe in the [~~amended~~] project cooperation agreement the terms and conditions under which the Land Office will fund the project.

(b) The [~~amended~~] project cooperation agreement shall provide for management of the project by either the Land Office or by the qualified project partner. The Land Office, in its sole discretion, may determine whether:

(1) the project will be managed by the Land Office, with payment to the Land Office by the qualified project partner of the required percentage of the shared project cost; or

(2) the project will be managed by the qualified project partner with reimbursement from the Account to the qualified project partner for project expenses for work completed in the amount provided in the project cooperation agreement.

(c) Except as provided in Texas Natural Resources Code, §33.603(f) and (h), qualified project partners are required to pay a specified percentage of the shared project costs that is not less than the minimum amount prescribed by Texas Natural Resources Code, §33.603(e) as follows:

(1) - (2) (No change.)

(d) - (g) (No change.)

§15.44. Beneficial Use of Dredged Materials.

(a) - (c) (No change.)

(d) In determining the suitability and practicality of dredged material for beach placement the Land Office may refer to the guidance found in Chapter 9 of U.S. Army Corps of Engineers, Publication No. EM 1110-2-5026, "Engineering & Design, Beneficial Uses of Dredged Material," USACE, June 1987 and U.S. Army Corps of Engineers, Publication No. EM 1110-2-1100, "Coastal Engineering Manual - Part V," Chapter 4, Beach Fill Design. [~~3301, "Design of Beach Fills," USACE, May 1995.~~] Copies of these publications can be obtained on request by mail sent to the General Land Office, Attn: Director, Coastal Resources Program Area, Coastal Stewardship Division, P.O. Box 12873, Austin, TX 78711-2873 and/or the U.S. Army Corps of Engineers web site located at http://www.usace.army.mil/inet/usace-docs/eng-manuals/cecw.htm. Only beach-quality sand shall be considered for beach placement.

(e) In this section "beach-quality sand" means sediment material that:

(1) - (2) (No change.)

(3) contains no hazardous substances listed in the Code of Federal Regulations, Title [~~Volume~~] 40, Part 261, Subpart D - Lists of Hazardous Wastes [~~300~~], in concentrations which are harmful to human health or the environment as determined by applicable, relevant, and appropriate requirements established by the local, state, and federal governments.

(f) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Trace Finley
Policy Director
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For further information, please call: (512) 475-1859

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SUBCHAPTER D. CERTIFICATION OF COASTAL WETLANDS

31 TAC §15.51, §15.52

The General Land Office (GLO) proposes to amend 31 TAC, Part 1, Chapter 15, relating to Coastal Area Planning, §15.51, relating to Coastal Area Planning, and §15.52, relating to Criteria for Certification; Assignment of Priorities for Acquisition; Revocation of Certification. The proposed amendments are necessary to update citations in the rules. These rule amendments have been undertaken as a result of the comprehensive review of the GLO's rules mandated by Texas Government Code §2001.039, and will ensure that the rules are clear, necessary, and updated.

The proposed amendment of §15.51(a) and §15.52(1) updates the citation to the Coastal Wetlands Acquisition Act. Sections 15.51(a) and 15.52(1) currently refer to Texas Civil Statutes Article 5415e-3, which has been codified at Texas Natural Resources Code, Chapter 33, Subchapter G, §§33.231-33.238.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the proposed rulemaking as a "major environmental rule." Under the Government Code, a "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. A regulatory analysis is required only when a major environmental rule exceeds a standard set by federal law, exceeds an express requirement of state law, exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the GLO. The proposed rulemaking will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, and is not adopted solely under the general powers of the GLO.

The proposed rulemaking is not subject to the Texas Coastal Management Program (CMP), Texas Natural Resources Code §33.2053 and 31 TAC §505.11, relating to the Actions and Rules Subject to the Coastal Management Program.

The Land Office has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines, to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The Land Office has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests.

Sam Webb, Deputy Commissioner for the Coastal Resources Program Area of the GLO, has determined that for each year of

the first five years the amended sections as proposed are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended sections as the amendments constitute minor clarifications to the rules.

Sam Webb, Deputy Commissioner for the Coastal Resources Program Area of the GLO, has determined that there will be no economic cost to persons required to comply with these regulations, as these amendments add no additional restrictions or requirements that did not already exist. The public will benefit from the proposed rule amendments because the amended rules will provide more clarity. There will be no effect on small businesses, and a local employment impact statement on these proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, *Texas Register* Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed under authority granted in Texas Natural Resources Code §31.051, which provides the Commissioner of the GLO the authority to make and enforce suitable rules consistent with the law; and Texas Natural Resources Code §§33.231-33.238, which require the Land Office to certify coastal wetlands which are most essential to the public interest in accordance with criteria developed by the Land Office.

The proposed amendments are necessary to implement Texas Natural Resources Code §31.051 and the Coastal Wetlands Acquisition Act, Texas Natural Resources Code §§33.231-33.238.

§15.51. Policy; Scope of Rules; Definitions.

(a) Policy. The protection and preservation of certain of the coastal wetlands of this state are essential to the public interest. The General Land Office incorporates by reference the policy statement as set forth in Texas Natural Resources Code §33.232 [~~Civil Statutes Article 5415e-3, §2~~].

(b) - (c) (No change.)

§15.52. Criteria for Certification; Assignment of Priorities for Acquisition; Revocation of Certification.

In selecting and certifying those coastal wetlands most essential to the public interest, assigning priorities for acquisition of such wetlands, and determining whether to revoke such a certification, the commissioner will consider the following criteria:

(1) Coastal wetlands. The commissioner may consider whether such lands are coastal wetlands within the definition, intent, and purpose of the Coastal Wetlands Acquisition Act, Texas Natural Resources Code §§33.231-33.238 [~~Civil Statutes Article 5415e-3, §2~~], as elaborated by the definition of coastal wetlands contained in §15.51 of this title (relating to Policy; Scope of Rules, Definitions).

(2) - (5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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PART 4. SCHOOL LAND BOARD

CHAPTER 155. LAND RESOURCES

SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §155.5

The School Land Board (Board) proposes amendments to §155.5 relating to Registration of Structures. The section authorizes littoral property owners to register piers with the General Land Office in accordance with Texas Natural Resources Code §33.115 and §33.132. The proposed amendments to §155.5 conform the rule to statutory changes to Texas Natural Resources Code §33.115 as amended by the 79th Legislature in H.B. 932 effective May 17, 2005.

The amendments to §155.5(c) clarify the process by which a littoral property owner may register and construct a pier. Specifically, new subsection (c)(3) adds language requiring that proof of recordation in the County Deed Records of the proposed registration be submitted to the General Land Office before a construction on a pier may begin. New subsection (e)(1)-(10) provides construction criteria for those piers that may be considered for registration under this rule. Subsections (f) and (g) have been renumbered and amended pursuant to the statutory changes rendered by HB 932 to reflect clarification of the process by which a littoral property owner, who has previously registered a structure pursuant to this rule, may make modifications or additions or rebuild a structure.

Mr. Rene Truan, Deputy Commissioner and Director for the Asset Inspection Division, has determined that for the first five-year period that the proposed rulemaking is in effect there will be no fiscal implications for local government.

Mr. Truan also has determined that for each year of the first five-year period the proposed rulemaking is in effect, the public benefit will be that the authorization to issue registrations for such structures will enhance the ability of the General Land Office (Land Office) to enforce compliance of such structures with the Board's regulations derelict structures, as well as compliance with applicable policies of the coastal management program in 31 TAC §501.24(a)(6) requiring that such structures be constructed in a manner that: (A) does not significantly interfere with public navigation; (B) does not significantly interfere with the natural coastal processes which supply sediments to shore areas or otherwise exacerbate erosion of shore areas; and (C) avoids and otherwise minimizes shading of critical areas and other adverse effects.

Mr. Truan has determined that there will be no additional cost of compliance for small or large businesses since the structures for which permits may be obtained may be used only for noncommercial, recreational purposes.

The Board has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to the Government Code, §2001.022.

The Board has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to §155.5 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §33.115 providing that the Board may issue registrations for structures incident to the ownership of littoral property provided such structures are non-commercial, are less than 115 feet in length and 25 feet in width, and require no filling or dredging.

The Board has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines, to determine whether a detailed takings impact assessment is required. The Board has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the Board has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendment. The Board has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the structures allowed to be constructed under this rule are located on property of the state.

The Board has reviewed these proposed actions for consistency with the applicable goals and policies Coastal Management Program (CMP) and regulations of the Coastal Coordination Council (Council). Since requests for structure registrations must meet the same criteria as set forth in subsection (a) of §155.5 for approval, as well as the policies of the CMP in 31 TAC §501.24(a)(6), the Board has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to council members in order to provide them an opportunity to provide comment on the consistency of the proposed new rules during the comment period.

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Ms. Deborah Cantu, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to deborah.cantu@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed under Texas Natural Resources Code, §33.064, providing that the Board may adopt procedural and substantive rules which it considers necessary to administer, implement and enforce Texas Natural Resources Code, Chapter 33.

Texas Natural Resources Code, §33.115, providing that owners of littoral property may, in lieu of obtaining an easement from the School Land Board, register the structure with the General Land Office is affected by the proposed amendments.

§155.5. Registration of Structures.

(a) (No change.)

(b) Pursuant to Texas Natural Resources Code §33.115, any littoral owner desiring to register a pier shall register such pier with the General Land Office by submitting a [~~$25~~] non-refundable registration fee and an executed structure registration. The structure registration shall be on a form provided by the General Land Office and shall contain the following.

(1) the name, mailing address, and telephone number of the littoral owner; the exact dimensions of the pier, including a drawing showing such dimensions;

(2) the exact location of the pier, including a vicinity map showing the location of the pier on coastal public land;

(3) a statement verifying that the littoral owner is the owner of the property adjoining the coastal public land on which the pier was constructed;

(4) a statement verifying that the littoral owner has read and understands the terms and conditions set forth is this section;

(5) a statement acknowledging that, if at any time it is discovered that the pier does not meet the requirements set forth in Texas Natural Resources Code §33.115, the littoral owner may be subject to penalties as prescribed by law; and

(6) a statement verifying that the littoral owner will comply will all applicable local, state, and federal laws, ordinances, rules, orders, and regulations of governing agencies concerning use of the pier and adjacent coastal public land.

(c) Construction of a pier pursuant to Texas Natural Resources Code §33.115 may commence only upon [~~Upon~~] receipt by the General Land Office of the following:

(1) a completed and executed structure registration form ; [~~and~~]

(2) the registration fee [~~by the General Land Office, the pier shall be deemed registered.~~];

(3) proof of recordation of a GLO provided memorandum in the County Deed Records in which the littoral property lies.

(d) (No change.)

(e) The construction criteria for piers pursuant to Texas Natural Resources Code §33.115 shall include the following:

(1) Only one pier may extend from each defined parcel of littoral property.

(2) Appurtenances are limited to those established by the General Land Office as normal appurtenances.

(3) A pier or dock shall extend perpendicular from a point on the shoreline, which is not less than ten feet from the adjacent littoral property line, unless such a design

(A) would obstruct navigation;

(B) would unreasonably interfere with an adjoining littoral property owner's use of the waterfront;

(C) or is otherwise in compliance with 31 TAC §155.9(m)(2)(B).

(4) Walkways may not exceed 4 feet in width, however, variances may be granted by the General Land Office upon demonstrated necessity.

(5) Boatlifts shall not be constructed in waters less than 3 feet Mean High Water.

(6) Piers may have terminal structures (T-head, dock, etc.). The dimensions of such terminal structures over vegetated areas shall be no more than 8 feet by 20 feet, (or a reasonable substitute equal to or less than 160 square feet in area) The dimensions of such terminal structures over non-vegetated areas shall be no more than 10 feet by 30 feet (or a reasonable substitute less than or equal to 300 square feet in area).

(7) Lower-level landings may be allowed but shall not exceed 40 square feet in overall area.

(8) Boatlifts and associated walkways may not exceed 16 feet in width.

(9) Personal water-craft (PWC) lifts (including ramps, platforms) may not exceed 120 square feet in overall area.

(10) Only 1 boatlift plus 1 jet-ski lift will be allowed per pier.

(f) [~~(e)~~] In the event a structure has been registered pursuant subsection (a) of this section and the littoral owner subsequently desires to make modifications or additions or rebuild the structure, the littoral owner shall obtain either [~~is required to obtain~~] an easement or lease, or new registration pursuant to Texas Natural Resources Code §33.115 in lieu of the prior registration.

(g) [~~(f)~~] In the event a pier has been registered pursuant to subsection (b) of this section and the littoral owner subsequently desires to make modifications or additions or rebuild such pier, the littoral owner is required to obtain in lieu of the original registration:

(1) a new registration if the pier's dimensions or location are changed from the footprint outlined in the structure registration, or

(2) an easement if such pier will be for

(A) commercial purposes,

(B) will require dredging or filling,

(C) [~~or~~] will exceed 115 feet in length or 25 feet in width, or

(D) not conform with the criteria outlined in subsection (e).

(h) [~~(g)~~] To the greatest extent possible, the littoral owner shall construct a pier, pursuant to Texas Natural Resources Code §33.115, in a manner that avoids existing marshes, oyster reefs, sea grass or shallow water capable of supporting these habitats. Impact to sensitive habitats that cannot be avoided shall be minimized to the greatest extent possible.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Trace Finley
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School Land Board
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For further information, please call: (512) 305-8598

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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 73. BENEFITS

34 TAC §73.21, §73.27

The Employees Retirement System of Texas (ERS) proposes amendments to Title 34, Chapter 73, Texas Administrative Code; §73.21 concerning reduction factors for age and retirement option, which include the reduction tables (Figure: 34 TAC §73.21(e)) and new §73.27 concerning payment of the retiree lump-sum death benefit. Section 73.21 is amended to comply with and conform to Senate Bill 1176, 79th Legislature, Regular Session, as it relates to changes under Texas Government Code, §814.206. New §73.27 is needed to comply with and conform to House Bill 70, 79th Legislature, Regular Session (HB 70), as it relates to changes under Texas Government Code, §814.501.

Section 73.21 is amended to add subsection (e) providing reduction factors for a standard nonoccupational disability retirement annuity for a member who retires before reaching an applicable age provided by Texas Government Code, §814.102 or §814.104.

New §73.27 is added to provide for the payment of the retiree lump-sum death benefit not later than the seventh day after ERS' receipt of a properly submitted claim form, death certificate, and other information that may be required to establish beneficiary status or heirship for the uncontested payment of a retiree lump-sum death benefit.

Paula A. Jones, General Counsel, has determined that for the first five-year period these rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering these rule, and small businesses and individuals will not be affected.

Ms. Jones also determined that for each year of the first five years these rules are in effect, the public benefit anticipated as a result of enforcing the rules will be clarification of the standard nonoccupational disability retirement benefit payable to members in a manner required by recent legislation, and a specified time frame for the payment of uncontested retiree lump-sum death benefits.

There are no known anticipated economic costs to persons who are required to comply with the rules as proposed other than the statutorily required annuity reduction that may apply to certain nonoccupational disability retirees.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Ms. Jones at pjones@ers.state.tx.us. The deadline for receiving comments is Monday, August 1, 2005 at 10:00 a.m.

The amendment to §73.21 is proposed under the following Texas Government Code provisions: §814.206(f), which provides authorization for the board of trustees (board) to adopt actuarial tables governing a standard nonoccupational disability, §815.105, which provides authorization for the board to adopt tables the board considers necessary for the retirement system and §815.102(a)(2), which provides authorization for the board to adopt rules for the administration of the funds of the retirement system.

New §73.27 is proposed under Texas Government Code, §814.501(a), as specified in HB 70, which provides authorization for the board to adopt a rule governing the procedures for the payment of the retiree lump-sum death benefit, and Texas Government Code §815.102(a)(2), which provides authorization for the board to adopt rules for the administration of the funds of the retirement system. These rules affect Title 8, Subtitle B of the Texas Government Code.

No other statutes are affected by these proposed amendments.

§73.21. Reduction Factor for Age and Retirement Option.

(a) - (d) (No change.)

(e) Reduction factors for a standard nonoccupational disability retirement annuity apply to a disability retirement application received by the System on or after September 1, 2005, and are those factors adopted by the board on August 24, 2005, based on assumptions adopted by the board on December 10, 2003.
Figure: 34 TAC §73.21(e)

§73.27. Payment of Retiree Lump-Sum Death Benefit.
Upon receipt of a properly completed claim form, death certificate and other information that may be required to establish beneficiary status or heirship for the uncontested payment of a retiree lump-sum death benefit, the System will provide for the payment of the lump-sum death benefit by notifying the Comptroller of Public Accounts not later than the seventh day after receipt.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2005.

TRD-200502713
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: August 14, 2005
For further information, please call: (512) 867-7480

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CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §§85.1, 85.7, 85.9, 85.11

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code §§85.1, 85.7, 85.9, and 85.11, concerning the Flexible Benefits Program. These sections are amended to define and direct the administration of the state of Texas Employees Flexible Benefit Program (TexFlex). These sections also comply with and conform to the provisions of the Internal Revenue Code, as amended, and the Texas Insurance Code, Chapter 1551.

Section 85.1 adds definitions of grace period and run-out period. Internal Revenue Service Notice 2005-42 authorizes plan sponsors to offer a grace period to participants of healthcare reimbursement accounts (HCRA) and dependent care reimbursement accounts (DCRA). These changes define the grace period as authorized by the board of trustees and the run-out period which describes the period of time following the end of the plan year during which participants may file claims.

Section 85.7 makes changes to the forfeiture provisions by adding the grace period to the end of the Plan Year thereby extending the period during which a participant may incur claims using balances accrued during the prior plan year.

Sections 85.9 and 85.11 add the timeframe for the grace period. IRS Notice 2005-42 authorizes a grace period of up to two (2) months and 15 days. This change specifies the grace period as authorized under the TexFlex Program. This change also renames what was previously referred to as the "grace period" and more appropriately refers to it as the "run-out period."

Paula A. Jones, General Counsel, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and small businesses and individuals will not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be updated information and clarification of the rules, as well as an extended grace period to benefit plan participants who may otherwise be required to forfeit plan contributions, but will instead be permitted to incur claims during the grace period that may be paid from balances attributable to the plan year. There are no known anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed new rule may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Ms. Jones at pjones@ers.state.tx.us. The deadline for receiving comments is Monday, August 1, 2005 at 10:00 a.m.

The amendments are proposed under Texas Insurance Code, §§1551.009, 1551.052 and 1551.206(e) and affect Texas Insurance Code, Chapter 1551. No other statutes are affected by this amendment.

§85.1. Introduction and Definitions.

(a) - (b) (No change.)

(c) Definitions. The following words and terms when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise, and wherever appropriate, the singular includes the plural, the plural includes the singular, and the use of any gender includes the other gender.

(1) - (20) (No change.)

(21) Grace period--A two (2) month and 15 day period, adopted by the TexFlex plan pursuant to IRS Notice 2005-42, immediately following the end of the plan year during which participants may continue to incur expenses for reimbursement from the prior year account balance.

(22) [~~(21)~~] Health care expenses--Any expenses incurred by a participant, or by a spouse or dependent of such participant, for health care as described in or authorized in accordance with the Code, §105 and §213, but only to the extent that the participant or other person incurring the expense is not reimbursed for the expense by insurance or other means. The types of expenses include, but are not limited to,

amounts paid for hospital bills, doctor bills, prescription drugs, hearing exams, vision exams, and eye exams.

(23) [~~(22)~~] Health care reimbursement account--The bookkeeping account maintained by the plan administrator or its designee used for crediting contributions to the account and accounting for benefit payments from the account.

(24) [~~(23)~~] Health care reimbursement plan--A separate plan, under the Code, §105, adopted by the board of trustees, and designed to provide health care expense reimbursement as described in §85.5(b) of this title (relating to Benefits).

(25) [~~(24)~~] Institution of higher education--All public community/junior colleges, senior colleges or universities, or any other agency of higher education within the meaning and jurisdiction of the Education Code, Chapter 61, except the University of Texas System and the Texas A&M University System.

(26) [~~(25)~~] Leave of absence without pay--The status of an employee who is certified monthly by an agency or institution of higher education administrator to be absent from duty for an entire calendar month, and who does not receive any compensation for that month.

(27) [~~(26)~~] Option--Any specific benefit offering under the plan.

(28) [~~(27)~~] Participant--An eligible employee who has elected to participate in the plan for a period of coverage.

(29) [~~(28)~~] Period of coverage--The plan year during which coverage of benefits under the plan is available to and elected by a participant; however, an employee who becomes eligible to participate during the plan year may elect to participate for a period lasting until the end of the current plan year. In such case, the interval commencing on such employee's entry date and ending as of the last day of the current period of coverage shall be deemed to be such participant's period of coverage.

(30) [~~(29)~~] Plan--The flexible benefits plan established and adopted by the board of trustees pursuant to the laws of the state [~~State~~] of Texas and any amendments which may be made to the plan from time to time. The plan is referred to herein as TexFlex, and is comprised of a dependent care reimbursement plan, a health care reimbursement plan and an insurance premium conversion plan.

(31) [~~(30)~~] Plan administrator--The board of trustees of the Employees Retirement System of Texas or its designee.

(32) [~~(31)~~] Plan year--A 12-month period beginning September 1 and ending August 31.

(33) Run-out period--The period following the end of the plan year between September 1 and December 31, during which participants may file claims for reimbursement of expenses incurred during the plan year and grace period.

(34) [~~(32)~~] Statutory nontaxable benefit--A benefit provided to a participant under the plan, which is not includable in the participant's taxable income by reason of a specific provision in the Code and is permissible under the plan in accordance with the Code, §125.

(35) [~~(33)~~] Spouse--The person to whom the participant is married. Spouse does not include a person separated from the participant under a decree of divorce, or annulment.

(36) [~~(34)~~] TexFlex--The flexible benefits plan adopted by the board of trustees.

(37) [~~(35)~~] Texas Employees Group Benefits Program--The employee insurance benefits program administered by the Employees Retirement System of Texas, pursuant to the Texas Insurance Code, Chapter 1551. The program consists of health, voluntary accidental death and dismemberment, optional term life, dependent term life, short and long term disability, and dental insurance coverages.

(38) [~~(36)~~] Third Party Administrator or TPA--The vendor, administrator or firm selected by the plan administrator to perform the day-to-day administrative responsibilities of the TexFlex program for participants of the Texas Employees Group Benefits Program who enroll in either the health care reimbursement plan, dependent care reimbursement plan or both.

§85.7. Enrollment.

(a) - (d) (No change.)

(e) Forfeiture of account balances.

(1) The amount credited to a participant's reimbursement account for each benefit election for any plan year will be used to reimburse or pay qualified expenses incurred during the eligible employee's period of coverage in such plan year and the grace period, if the claim is electronically adjudicated or if the participant files a correctly completed claim for reimbursement on or before December 31 following the close of the plan year.

(2) Any balances remaining after payment of all timely and correctly filed claims postmarked no later than December 31 following the close of the plan year and the grace period, shall be forfeited by the participant and be available to pay administrative expenses of the flexible benefits program.

(f) Reimbursement report to participant. The plan administrator or its designee shall provide to the participant periodic reports on each reimbursement account, showing the account transactions (disbursements and balances) during the plan year and the grace period. These reports may be provided periodically through electronic means.

§85.9. Payment of Claims from Reimbursement Accounts.

(a) Claim for reimbursement.

(1) Claims for reimbursement of expenses incurred during an eligible employee's period of coverage in the plan year or during the grace period may be submitted at any time during the plan year or grace period, but not later than December 31 following the close of the plan year.

(2) Claims shall be paid to the extent of available flexible benefit dollars allocable to the applicable type of expenses and shall only be paid out of flexible benefit dollars for the plan year, which may include the grace period, in which the expense was incurred. The TPA shall compare the participant's available balance and the amount of the expense to make certain that claims are paid according to the provisions of the Code and these rules.

(3) Expenses incurred prior to becoming a participant or after the last day of a plan year or the grace period, [~~August 31,~~]shall not be covered by this plan. A terminated participant may continue to file claims for eligible expenses incurred during the employee's period of coverage within the plan year and grace period, if applicable, to exhaust reimbursement account balances no later than December 31 following the close of the plan year.

(4) Claims shall be submitted in a manner prescribed by the Employees Retirement System of Texas or its designee, accompanied by such bills, receipts or other proof of incurring the expense as the plan administrator or its designee may require.

(5) A claim form must be submitted each time reimbursement or payment is requested, unless using the debit card.

(6) The dependent care and health care reimbursement accounts are separate accounts, and funds from one account may not be used to reimburse expenses of the other account.

(b) Debit Card transactions.

(1) Debit card payments for eligible expenses incurred during a participant's [~~an employee's~~] period of coverage in the plan year and the grace period may occur at any time during the plan year and the grace period, but not later than November 15th [~~August 31st or the last day of the plan year~~].

(2) Transactions shall be processed to the extent of available flexible benefit dollars allocable to the applicable type of expenses and shall only be paid out of flexible benefit dollars for the plan year, which may include the grace period, in which the expense was incurred. The TPA shall compare the participant's available balance and the amount of the expense to make certain that claims are paid according to the provisions of the Code and these rules.

(3) Expenses incurred prior to becoming a participant shall not be covered by this plan. Expenses incurred by a participant may be covered only in the plan year, which may include the grace period, in which the expense is actually incurred. Upon a participant's termination, the debit card will be automatically deactivated. Paper claims may be filed for eligible expenses incurred during the participant's period of coverage within the plan year, and the grace period, if applicable, in which he was a participant. All claims for reimbursement from account balances must be filed no later than December 31 immediately following the close of the plan year.

(4) Participants may be required to submit bills, receipts or other proof of incurring the expense as the plan administrator or its designee may require.

(5) Reimbursements or payments made using the debit card may require additional supporting documentation as may be requested by the plan administrator or its designee, and the participant must maintain his own records to substantiate the eligibility of all expenses for individual income tax purposes, if necessary.

(c) - (d) (No change.)

§85.11. Administration.

(a) - (c) (No change.)

(d) Miscellaneous provisions.

(1) The participation in the plan of an employee is subject to changes in applicable state and federal laws and regulations and the sections in this chapter.

(2) The plan year begins on September 1 of each year and ends on August 31. The run-out [~~grace~~] period for filing claims for services used during the plan year and the grace period, ends on December 31. The grace period begins at the end of the plan year and ends two (2) months and 15 days later.

(3) The mailing address of the plan administrator is: Plan Administrator, TexFlex Plan, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

(4) If a provision in the sections in this chapter conflicts with a federal law, rule, or regulation governing the plan, then the law, rule, or regulation prevails over the provision.

(5) The participation of an employee in the plan does not give the employee a legal or equitable right against the participant's employing state agency, institution of higher education, the plan administrator, TPA or the state [~~State~~] of Texas except as provided in the sections in this chapter. The plan does not affect the terms of employment between a participant and the participant's employing state agency or institution of higher education.

(6) Except for the grace period, if [~~If~~] a time limit is expressed in terms of a number of days and the last day of the time limit falls on a weekend or holiday recognized by the state [~~State~~] of Texas for observance by state employees, the last day of the time period shall be the first business day after the weekend or holiday. The end of the grace period shall be the actual day on which it falls, even if it is a weekend or holiday.

(7) The sections in this chapter prevail over any document used in the administration of the plan that has provisions or requirements which conflict with the sections.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2005.

TRD-200502711
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: August 14, 2005
For further information, please call: (512) 867-7421

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 4. COOPERATIVE MARKETING ASSOCIATIONS

4 TAC §4.2

The Texas Department of Agriculture (the department) adopts an amendment to §4.2, concerning licensing of cooperative marketing associations, without changes to the proposal published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 2965). The amendment is adopted to make §4.2(d) consistent with the current agency process for issuing cooperative marketing association licenses. The amendment provides that cooperative marketing association licenses expire one year from the date of issuance or when the association is dissolved or its charter is forfeited.

No comments were received on the proposal.

The amendment to §4.2 is adopted under Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code, including Chapter 52, relating to cooperative marketing associations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 2005.

TRD-200502717
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: July 21, 2005
Proposal publication date: May 20, 2005
For further information, please call: (512) 463-4075

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 39. PUBLIC NOTICE

SUBCHAPTER M. PUBLIC NOTICE FOR RADIOACTIVE MATERIAL LICENSES

30 TAC §§39.703, 39.707, 39.709

The Texas Commission on Environmental Quality (commission) adopts amendments to §§39.703, 39.707, and 39.709 *with changes* to the proposed text as published in the January 28, 2005, issue of the *Texas Register* (30 TexReg 360).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

On September 24, 2003, the commission considered the petition for rulemaking that was filed by Newpark Resources, Inc. on August 5, 2003. The petitioner requested that the commission initiate rulemaking to allow commercial disposal of naturally occurring radioactive material (NORM) waste in Class I injection wells located at facilities at which the storage and processing of such material is licensed by the Texas Department of Health (TDH), Bureau of Radiation Control. TDH is the predecessor agency of the Department of State Health Services. The petitioner also requested amendments to the memorandum of understanding (MOU) with TDH to reflect that TDH is authorized to regulate the storage and processing of NORM waste that will be disposed of at a commercial NORM waste disposal facility.

The commission directed staff to initiate rulemaking for the licensing of commercial disposal of NORM waste streams from public water systems by injection into Class I injection wells. The commission decided that the MOU with TDH should not be amended as requested by the petitioner.

This rulemaking amends the public notice requirements for radioactive material licenses and establishes notice requirements for license applications for commercial disposal of NORM waste authorized under 30 TAC Chapter 336, Subchapter K. A corresponding rulemaking that includes changes to Chapter 336, Radioactive Substance Rules, is published in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are adopted throughout the sections to bring the existing rule language into agreement with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004.

Section 39.703(a) is adopted to add the phrase "by the Office of the Chief Clerk" to make it clear who must mail the notice. The phrase "by the applicant" has been deleted since proposal. The change was made because some notices under this subchapter are published by the applicant and other notices are published by the commission at the applicant's expense.

Section 39.703(b) is adopted to make the notice requirements of this section applicable to licenses issued under Chapter 336, Subchapter K, Commercial Disposal of Naturally Occurring Radioactive Material Waste From Public Water Systems.

Section 39.707(a) is adopted to make the notice requirements of this section applicable to licenses issued under Chapter 336, Subchapter K.

Section 39.709(b) is adopted to make the notice requirements of this section applicable to licenses issued under Chapter 336, Subchapter K.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules are not subject to §2001.0225 because they do not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The adopted amendments to Chapter 39 are part of the commission's rulemaking to authorize commercial disposal of NORM waste. The specific intent of the adopted rules is to allow commercial injection well disposal of NORM waste generated by public water systems. These rules will benefit public water systems by providing an additional disposal option for NORM waste generated from the treatment of water supplies. It is not anticipated that the adopted rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the adopted rules would only apply to commercial Class I injection well disposal of NORM waste generated by public water systems. The adopted amendments to Chapter 39 are procedural changes that establish the public notice requirements for NORM waste disposal license applications. Therefore, the commission concludes that these adopted rules do not meet the definition of a major environmental rule.

Furthermore, the adopted rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these applicability requirements. First, there are no applicable federal standards that these rules would address. Disposal of NORM waste is not subject to standards established by the Nuclear Regulatory Commission or the United States Environmental Protection Agency (EPA). Second, the adopted rules do not exceed an express requirement of state law. Texas Health and Safety Code (THSC), Chapter 401, authorizes the commission to regulate the disposal of most radioactive material in Texas. However, there are no specific requirements for the disposal of NORM waste in the Texas Radiation Control Act that are exceeded by these adopted rules. Third, there is no delegation agreement that would be exceeded by these adopted rules because no delegation agreement relates to this subject matter area. Fourth, the commission does not propose these rules solely under the commission's general powers. THSC, Chapter 401, §§401.051, 401.103, 401.104, and 401.412, specifically authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive materials.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an assessment of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to provide notice requirements for license applications authorizing commercial injection well disposal of NORM waste generated by public water systems. These adopted rules will only apply to license applications for commercial Class I injection well disposal of NORM waste generated by public water systems. Because EPA adopted federal standards for radionuclides in drinking water, some public water systems subject to these federal standards will need to manage and dispose of their treatment residuals containing NORM in a manner that is protective of human health and safety and the environment. The adopted rules would substantially advance this stated purpose by allowing commercial injection well disposal of NORM waste streams generated by public water systems.

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property because the adopted rules do not affect real property. In particular, there are no burdens imposed on private real property, and the adopted rules would allow a new option for the commercial disposal of NORM waste for public water systems dealing with NORM waste generated by the treatment of public water supplies. The existing prohibition of commercial disposal of NORM waste is removed to allow commercial Class I injection well disposal of NORM waste generated by public water systems. The adopted amendments to Chapter 39 are procedural changes that establish the public notice requirements for NORM waste disposal license applications. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, these adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

The comment period closed on February 28, 2005. A public hearing on this proposal was held in Austin on February 24, 2005. The commission received no comments with regard to Chapter 39.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act, THSC, Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to the control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; and §401.412, which provides authority to the commission to regulate and license the disposal of radioactive substances and to adopt rules necessary to exercise this authority. The amendments are also adopted under Texas Water Code, §27.019, which requires the commission to adopt rules reasonably required for the performance of the commission's duties under the Injection Well Act. The adopted amendments are also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The adopted amendments implement the Texas Radiation Control Act, THSC, Chapter 401; and the Injection Well Act, Texas Water Code, Chapter 27.

§39.703. Notice of Completion of Technical Review.

(a) When the executive director has completed the technical review of an application for a license, major amendment, or renewal of a license issued under Chapter 336 of this title (relating to Radioactive Substance Rules) or for a minor amendment issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), notice must be mailed by the Office of the Chief Clerk and published under this subchapter. The deadline to file public comment, protests, or hearing requests is 30 days after publication.

(b) For any other application for a minor amendment to a license issued under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this title (relating to Decommissioning Standards), or Subchapter K of this title (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste From Public Water Systems), notice must be mailed by the Office of the Chief Clerk under this subchapter. The deadline to file public comment, protests, or hearing requests is ten days after mailing.

§39.707. Published Notice.

(a) For applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this title (relating to Decommissioning Standards), or Subchapter K of this title (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste From Public Water Systems), when notice is required to be published under this subchapter, the applicant shall publish notice at least once in a newspaper of largest general circulation in the county in which the facility is located.

(b) For applications for a new license, renewal license, or major amendment to a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near- Surface Land Disposal of Low-Level Radioactive Waste), on completion of technical review and preparation of the draft license, the commission shall publish, at the applicant's expense, notice of the draft license and specify the requirements for requesting a contested case hearing by a person affected. The notice must include a statement that the draft license is available for review on the commission's Web site and that the draft license and application materials are available for review at the offices of the commission and in a public place in the county or counties in which the proposed disposal facility site is located. Notice must be published in a newspaper of general circulation in each county in which the proposed disposal facility site is located.

(c) In addition to published notice requirements in subsection (b) of this section, for an initial notice of draft license and opportunity to comment and for any subsequent license amendment of a license under Chapter 336, Subchapter H of this title, the chief clerk shall publish notice once in the *Texas Register*.

§39.709. Notice of Contested Case Hearing on Application.

(a) The requirements of this section apply when an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(b) For applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this title (relating to Decommissioning Standards), or Subchapter K of this title (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste From Public Water Systems), notice must be mailed no later than 30 days before the hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), notice must be mailed no later than 31 days before the hearing.

(c) When notice is required under this section, the text of the notice must include the applicable information specified in §39.411(b)(13) and (d) of this title (relating to Text of Public Notice).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 2005.

TRD-200502704
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to §§336.1, 336.105, 336.211, 336.501, and 336.601. The commission also adopts new Subchapter K consisting of §§336.1001, 336.1003, 336.1005, 336.1007, 336.1009, 336.1011, 336.1013, 336.1015, 336.1017, and 336.1019. Sections 336.1, 336.105, 336.211, 336.1005, 336.1007, 336.1009, 336.1011, 336.1013, and 336.1015 are adopted *with changes* to the proposed text published in the January 28, 2005, issue of the *Texas Register* (30 TexReg 363). Sections 336.501, 336.601, 336.1001, 336.1003, 336.1017, and 336.1019 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

On September 24, 2003, the commission considered the petition for rulemaking filed by Newpark Resources, Inc. (petitioner) on August 5, 2003. The petitioner requested that the commission initiate rulemaking to allow commercial disposal of naturally occurring radioactive material (NORM) waste in Class I injection wells located at facilities at which the storage and processing of such material is licensed by the Texas Department of Health (TDH), Bureau of Radiation Control. TDH is the predecessor agency of the Department of State Health Services (DSHS). The petitioner also requested amendments to the Memorandum of Understanding (MOU) between TDH and the commission to reflect that TDH is authorized to regulate the storage and processing of NORM waste that will be disposed of at a commercial NORM waste disposal facility.

The commission directed staff to initiate rulemaking for the licensing of commercial disposal of NORM waste streams from public water systems by injection into Class I injection wells. The commission decided that the MOU with TDH should not be amended as requested by the petitioner. The MOU with TDH is codified as 25 TAC §289.101 and adopted by reference in 30 TAC §7.118, Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions. Section 289.101(d)(1) of the MOU provides that the receipt, storage, and/or processing of radioactive substances received by a Texas Natural Resource Conservation Commission (TNRCC) (predecessor agency of the TCEQ) licensee at a commercial radioactive substance disposal facility for the explicit purpose of disposal at that facility shall be regulated by the TNRCC. This requirement is mirrored in existing commission rules in 30 TAC §336.211(d), General Requirements for Radioactive Material Disposal. Thus, the receipt, storage, and/or processing of NORM waste at a commercial disposal facility will be regulated by the TCEQ in accordance with these provisions. This is necessary to ensure that NORM waste is properly conditioned for disposal in Class I injection wells. Also, the TCEQ must ensure that procedures for waste receipt, storage, and processing are protective of human health and safety and the environment.

This rulemaking adopts amendments to Chapter 336 to create a licensing program for the commercial Class I injection well disposal of NORM waste generated by public water systems. A corresponding rulemaking that includes changes to 30 TAC Chapter 39, Public Notice, is published in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are adopted throughout the sections to bring the existing rule language into agreement with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004.

SUBCHAPTER A: GENERAL PROVISIONS

§336.1, Scope and General Provisions

Section 336.1 is adopted to provide authorization for disposal of NORM waste. Specifically, new §336.1(f)(4) provides authorization for disposal of NORM waste from other persons in accordance with Subchapter K, Commercial Disposal of Naturally Occurring Radioactive Material Waste From Public Water Systems.

SUBCHAPTER B: RADIOACTIVE SUBSTANCE FEES

§336.105, Schedule of Fees for Other Licenses

Section 336.105 is adopted to amend the fees for licenses issued under Subchapter K, and to modify fees for licenses issued under Subchapter F, Licensing of Alternative Methods of Disposal of Radioactive Material. Section 336.105(a)(1) increases the license application fee for facilities regulated under Subchapter F from $20,000 to $50,000. The increased fee more accurately reflects the commission's cost in reviewing a Subchapter F license application. Texas Health and Safety Code (THSC), §401.412(d), provides that the commission may assess and collect an annual fee for each license and registration and for each application in an amount sufficient to recover its reasonable costs. The commission's cost for reviewing a new application and issuing a radioactive material license under Subchapter F or Subchapter K is approximately $40,000 to $100,000, depending on the complexity of the application. These estimates do not include fringe and indirect costs. Adopted new subsection (a)(3) requires a license application fee of $50,000 for facilities regulated under Subchapter K. Section 336.105(a) is also adopted to reorganize the list of subchapters in sequential order. Section 336.105(b)(1) decreases the annual license fee for facilities regulated under Subchapter F from $28,900 to $25,000. The decreased annual fee more accurately reflects the commission's cost in reviewing a licensee's annual reports and conducting inspections of licensed facilities. The commission's cost for conducting an annual review of an existing radioactive material license issued under Subchapter F or Subchapter K is approximately $25,000. This estimate includes one compliance inspection of the facility per year. Adopted new subsection (b)(3) requires an annual license fee of $25,000 for facilities regulated under Subchapter K. Section 336.105(b) is also adopted to reorganize the list of subchapters in sequential order. Section 336.105(c) is adopted to require a fee of $10,000 for major amendments of licenses issued under Subchapter K. This adopted fee is consistent with existing fees for a major amendment of licenses issued under Subchapter F and Subchapter G. Adopted new §336.105(d) requires a license application fee of $35,000 for the renewal of licenses issued under Subchapter F or Subchapter K. This amount was decreased from $50,000 in the proposed rules in response to comments received. Existing §336.105(d) is relettered as §336.105(e) and provides a fee schedule for holders of licenses issued under Subchapter K following cessation of disposal activities.

SUBCHAPTER C: GENERAL DISPOSAL REQUIREMENTS

§336.211, General Requirements for Radioactive Material Disposal

Section 336.211(a) adds new subsection (a)(7). This amendment is adopted for consistency with other authorized disposal methods referenced in the section. Existing subsection (a)(7) and (8) are renumbered accordingly. Section 336.211(b) adds new §336.211(b)(5). New subsection (b)(5) requires a person to be specifically licensed to receive waste containing licensed material from other persons for disposal by injection into an underground injection control Class I injection well.

SUBCHAPTER F: LICENSING OF ALTERNATIVE METHODS OF DISPOSAL OF RADIOACTIVE MATERIAL

§336.501, Scope and General Provisions

Section 336.501 adds a new subsection (d). Adopted new §336.501(d) provides that the commission may license the commercial disposal of NORM waste under Subchapter K.

SUBCHAPTER G: DECOMMISSIONING STANDARDS

§336.601, Applicability

Section 336.601(a) applies the decommissioning criteria in Subchapter G to NORM waste disposal facilities that are licensed under Subchapter K.

NEW SUBCHAPTER K: COMMERCIAL DISPOSAL OF NATURALLY OCCURRING RADIOACTIVE MATERIAL WASTE FROM PUBLIC WATER SYSTEMS

§336.1001, Scope and General Provisions

New §336.1001 is adopted to provide a statement of general applicability for Subchapter K, which establishes requirements for waste disposal facilities that accept NORM waste from public water systems for commercial disposal by injection into Class I injection wells. The requirements of Subchapter K will not preclude a generator from on-site disposal of NORM waste by Class I injection or by other authorized disposal methods under Subchapter F. Subchapter F applies to authorization of non-commercial disposal activities.

§336.1003, Definitions

Adopted new §336.1003(1) adds a definition for "Commercial disposal," that is the disposal of NORM waste received by the licensee from other persons. Adopted new §336.1003(2) adds a definition for "Naturally occurring radioactive material waste disposal facility." Adopted new §336.1003(3) adds a definition for "Public water system." Adopted new §336.1003(4) adds a definition for "Site."

§336.1005, Disposal Method

New §336.1005 is adopted to authorize the commercial disposal of NORM waste from public water systems only by injection into a Class I injection well permitted under 30 TAC Chapter 331, Underground Injection Control, that is specifically permitted for the disposal of NORM waste. The words "from public water systems" were added in response to comments.

§336.1007, License Application for Commercial Disposal of Naturally Occurring Radioactive Material Waste

New §336.1007 is adopted to provide requirements for applications for licenses for the commercial disposal of NORM waste. New subsection (a) is adopted to provide technical requirements to be addressed in the license application that will enable the executive director to evaluate the applicant's proposed siting, design, construction, and operation of the NORM waste disposal facility. The words "specific activity" were added to §336.1007(a)(1) in response to comments. New subsection (b) is a general requirement that the applicant shall submit sufficient information to allow the executive director to assess the potential hazard to public health and safety, and to determine whether the NORM waste disposal facility will have a significant impact on the environment. New subsection (c) requires that the applicant shall provide any other information that may be requested by the executive director.

§336.1009, Standards for Issuance of a License, License Amendment, or License Renewal

New §336.1009 is adopted to specify the standards that the applicant must meet for the commission to issue, amend, or renew a license for commercial disposal of NORM waste. New §336.1009(1) is adopted to ensure that the applicant is qualified by reason of training and experience to carry out the disposal operations in a manner that protects human health and safety and the environment. New §336.1009(2) is adopted to require that the applicant's proposed NORM waste disposal facility's siting, design, construction, operation, and closure are adequate to protect the public health and safety in that it will provide reasonable assurance that the general population will be protected from releases of radioactivity. New §336.1009(3) is adopted to require that the applicant has provided reasonable assurance that applicable technical requirements of this chapter have been met. New §336.1009(4) is adopted to require that the applicant's financial assurance meets the requirements of this chapter. Section 336.1011(g) in the proposal has been moved to §336.1009(5) for consistency. The requirement that the location of the NORM waste disposal facility must be compatible with the uses of surrounding environs is more appropriate as a finding made upon license issuance. New §336.1009(5) is renumbered as §336.1009(6) and adopted as a general requirement that the applicant shall meet all applicable requirements under the rules of the commission.

§336.1011, Performance Objectives

New §336.1011 is adopted to establish radiological criteria for the performance of the NORM waste disposal facility. A performance assessment shall be conducted by the applicant to ensure that these radiological criteria are met. Adopted new §336.1011(a) provides that the performance objectives of this section apply to the NORM waste disposal facility and any underground source of drinking water, as defined in §331.2, Definitions, that may be impacted by activities at the NORM waste disposal facility. The performance objectives do not apply to NORM waste in the injection zone.

Adopted new §336.1011(b) requires that radiation exposure and release of radioactive materials from a NORM waste disposal facility shall be maintained as low as is reasonably achievable. Concentrations of radioactive material that may be released to the general environment in groundwater, surface water, air, soil, plants, or animals shall not result in an annual dose above background exceeding an equivalent of 25 millirems to the whole body, 75 millirems to the thyroid, or 25 millirems to any other organ of any member of the public. These requirements are consistent with the performance objectives for the disposal of low-level radioactive waste given in Subchapter H of this chapter.

Adopted new §336.1011(c) requires that operations at the NORM waste disposal facility shall be conducted in compliance with the standards for radiation protection set out in Subchapter D, Standards for Protection Against Radiation, except for releases of radioactivity in effluents from the NORM waste disposal facility, which shall be governed by §336.1011(b). The licensee is also required to conduct analyses of the protection of individuals during operations, and those analyses shall include assessments of expected doses due to routine operations and potential accidents during handling, storage, processing, and disposal of NORM waste. The word "doses" was substituted for "exposures" and the word "potential" was substituted for "likely" in response to comments. Adopted new §336.1011(d) requires that the location and characteristics of a NORM waste disposal facility must preclude potential off-site migration or transport of radioactive materials or ready access to critical exposure pathways. This requirement is consistent with existing rules for licensing of alternative methods of disposal of radioactive material under §336.513(c)(2). Adopted new §336.1011(e) describes the analyses required to demonstrate protection of the general population from releases of radioactivity. Adopted

new §336.1011(f) requires that the NORM waste disposal facility must be located, designed, constructed, operated, and closed so that long-term isolation and custodial care for long-term stability will not be required beyond the time that the licensee occupies the NORM waste disposal facility. Section 336.1011(g) in the proposal has been moved to adopted §336.1009(5) for consistency with other standards for issuance of a license.

§336.1013, Terms and Conditions of License

New §336.1013 is adopted to establish terms and conditions for a NORM waste disposal facility license. Adopted new subsection (a) is a general provision requiring that at any time before termination of the license, the licensee shall submit written statements under oath upon request of the commission or executive director to enable the commission to determine whether or not the license should be modified, suspended, or revoked. Adopted new subsection (b) provides that the licensee shall be subject to the applicable provisions of THSC, Chapter 401, also known as the Texas Radiation Control Act. Adopted new subsection (c) provides that any license may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application. Adopted new subsection (d) requires that each person licensed by the commission under this subchapter shall confine possession and use of NORM waste to the locations and purposes authorized in the license.

Adopted new subsection (e) requires that no NORM waste may be disposed of until the executive director has inspected the NORM waste disposal facility and has found it to be in conformance with the description, design, and construction described in the application for a license. Section 336.1013(e)(2) in the proposal has been deleted in response to comments. Adopted new subsection (f) requires that no NORM waste may be received for disposal at the NORM waste disposal facility until the executive director has approved financial assurance in writing. Adopted new subsection (g) provides that the commission may incorporate additional requirements and conditions in any license at the time of issuance, or thereafter, by appropriate rule or order. Adopted new subsection (h) provides that each license shall be issued for an initial term of ten years from the date of issuance. After the initial ten years, the commission may renew the license for one or more terms of ten years. The authority to dispose of radioactive material expires on the date stated in the license.

§336.1015, Maintenance of Records and Reports

New §336.1015 is adopted to provide requirements for recordkeeping and maintenance of records. Adopted new subsection (a) requires that each licensee shall maintain any records and make any reports as may be required by the conditions of the license, by the rules in this chapter, or by orders of the commission. Adopted new subsection (b) provides that records that are required by the rules in this chapter or by license conditions must be maintained for a period specified by the appropriate rules or by license condition. Adopted new subsection (c) provides that each record required by this chapter must be legible throughout the specified retention period. Adopted new subsection (d) provides that if there is a conflict between the commission's rules, license condition, or other written approval or authorization from the executive director pertaining to the retention period for the same type of record, the longest retention period specified takes precedence. Adopted new subsection (e) requires that the licensee shall record the location and the quantity of wastes disposed and shall transfer these records upon license termination to the executive director and to such other government agencies or officials as designated by the commission.

Adopted new subsection (f) describes receipt, acceptance, and manifesting requirements for shipments of NORM waste. Adopted new subsection (g) requires that each licensee authorized to dispose of waste received from other persons shall file a copy of its financial report or a certified financial statement annually with the executive director in order to update the information base for determining financial qualifications. Adopted new subsection (h) provides requirements for the submittal of annual reports by the licensee. Adopted new subsection (i) provides requirements for maintaining an electronic recordkeeping system.

§336.1017, Tests at Naturally Occurring Radioactive Material Waste Disposal Facilities

New §336.1017 is adopted to provide that each licensee shall perform or allow the executive director to perform any tests that the executive director deems appropriate or necessary for the administration of the rules in this chapter.

§336.1019, Liability Coverage and Funding for Naturally Occurring Radioactive Material Waste Disposal Facility Closure and Stabilization

New §336.1019 is adopted to provide financial assurance and liability coverage requirements for NORM waste disposal facilities. Adopted new subsection (a) requires that the applicant shall provide assurance 60 days prior to the initial receipt of waste that sufficient funds will be available to carry out closure and stabilization of the NORM waste disposal facility. Adopted new subsection (b) requires that the assurance must be based on cost estimates approved by the executive director, which reflect the commission-approved plan for closure and stabilization of the NORM waste disposal facility. The applicant's cost estimates must take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work. Adopted new subsection (c) provides that the licensee's financial assurance mechanism and cost estimates must be reviewed annually to assure that sufficient funds are available for completion of the closure plan, assuming that the work has to be performed by an independent contractor. Adopted new subsection (d) provides that the amount of financial assurance must change in accordance with the predicted cost of future closure and stabilization. Adopted new subsection (e) requires that 60 days prior to the initial receipt of waste, the licensee shall provide financial assurance for bodily injury and property damage to third parties caused by sudden and non-sudden accidental occurrences arising from operations of the NORM waste disposal facility in a manner that meets the requirements of 30 TAC Chapter 37, Financial Assurance. Adopted new subsection (e) also requires that financial assurance mechanisms submitted to comply with this section must meet the requirements specified in Chapter 37.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules are not subject to §2001.0225 because they do not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the adopted rules is to allow commercial injection well disposal of NORM waste generated by public water systems. These rules will benefit public water systems by providing an additional disposal option for NORM waste generated from the treatment of public water supplies. It is not anticipated that the adopted rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the adopted rules would only apply to commercial Class I injection well disposal of NORM waste generated by public water systems. Therefore, the commission concludes that these adopted rules do not meet the definition of a major environmental rule.

Furthermore, the adopted rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Section 2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these applicability requirements. First, there are no applicable federal standards that these rules would address. Disposal of NORM waste is not subject to standards established by the Nuclear Regulatory Commission or the United States Environmental Protection Agency (EPA). Second, the adopted rules do not exceed an express requirement of state law. THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive material in Texas. However, there are no specific requirements for the disposal of NORM waste in the Texas Radiation Control Act that are exceeded by these adopted rules. Third, there is no delegation agreement that would be exceeded by these adopted rules because no delegation agreement relates to this subject matter area. Fourth, the commission does not propose these rules solely under the commission's general powers. THSC, Chapter 401, §§401.051, 401.103, 401.104, and 401.412, specifically authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive materials.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an assessment of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to allow commercial injection well disposal of NORM waste generated by public water systems. These adopted rules will only apply to commercial Class I injection well disposal of NORM waste generated by public water systems. EPA has adopted federal standards for radionuclides in drinking water; some public water systems subject to these federal standards will need to manage and dispose of their treatment residuals containing NORM in a manner that is protective of human health and safety and the environment. The adopted rules would substantially advance this stated purpose by allowing commercial injection well disposal of NORM waste streams generated by public water systems.

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property because the adopted rules do not affect real property. In particular, there are no burdens imposed on private real property, and the adopted rules would allow a new option for the commercial disposal of NORM waste for public water systems dealing with NORM waste generated by the treatment of public water supplies. The existing prohibition of commercial disposal of NORM waste is removed to allow commercial Class I injection well disposal of NORM waste generated by public water systems. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, these adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

The comment period closed on February 28, 2005. A public hearing on this proposal was held in Austin on February 24, 2005.

Written and/or oral comments were received from Hance Scarborough Wright Woodward & Weisbart (HSWWW), the Office of Public Interest Counsel (OPIC), and EPA, Region 6 Ground Water/Underground Injection Control Section.

Oral comments were also received from the Texas Radiation Advisory Board (TRAB) at its quarterly meeting on February 26, 2005.

RESPONSE TO COMMENTS

TRAB generally supported the proposed rules and recommended the adoption with minor editorial changes. TRAB commented that proposed §336.1005, Disposal Method, should state explicitly that NORM waste from public water systems is authorized for disposal.

The commission agrees with this comment and is amending §336.1005 to add the words "from public water systems" to provide that only NORM waste from public water systems may be disposed.

TRAB commented that proposed §336.1007(a)(1) should include the specific activity of radionuclides to be disposed.

The commission agrees with this comment and is amending §336.1007(a)(1) to require a license applicant to submit a projected inventory of radionuclides in the waste to be disposed and the estimated concentration, specific activity, and total radioactivity by radionuclide.

TRAB commented that the word "doses" should be substituted for "exposures," and that the word "potential" should be substituted for "likely" in §336.1011(c).

The commission agrees with this comment and is amending §336.1011(c) to provide a better description of information required in the analysis of the performance objectives.

EPA stated that it does not believe the proposed rules modify the delegated underground injection control program or the applicable rules and regulations. EPA commented that some NORM waste may tend to be in the form of slurries that may be more difficult to inject, and that federal regulations provided that the maximum allowed operating injection pressure in injection wells must not initiate new fractures or extend existing fractures in the injection zone.

The commission agrees with these comments. The federal regulation pertaining to limitations on maximum injection pressure is reflected in the commission's underground injection control rule in 30 TAC §331.63(b). The commission considers injection pressure at the wellhead as part of the review of Class I injection well permit applications. The maximum injection pressure is limited in each injection well permit to a value that is calculated to assure no new fractures are initiated and no existing fractures are propagated in the injection zone. The commission made no changes in response to these comments.

OPIC stated that it generally supports the adoption of the proposed rules. OPIC recommended deletion of §336.1013(e)(2), which waives the requirement for the TCEQ's executive director's inspection of the NORM waste disposal facility prior to commencement of waste disposal. OPIC contended that inspection by the executive director is imperative to verify that all construction requirements have been met and to ensure protection of human health and the environment.

The commission agrees with this comment. NORM waste may not be disposed of until the executive director has inspected the NORM waste disposal facility and has found it to be in conformance with the description, design, and construction described in the application for a license. Section 336.1013(e)(2) has been deleted in response to this comment.

HSWWW generally supported the proposed rules but stated that the proposed fees were too high. HSWWW represents the petitioner and commented that the fees should be reduced to a reasonable level that their client can deal with.

HSWWW stated that the proposed application fee of $50,000, the proposed annual fee of $25,000, and the proposed license amendment fee of $10,000 are significantly high for commercial NORM waste disposal facilities and should be reduced. HSWWW commented that if the proposed fees remain unchanged, the facilities would be obligated to increase disposal costs charged to public water systems, which would result in high costs for ultimate end use, the consumers.

HSWWW commented that the proposed license application fee of $50,000 is excessive when compared to application fees for similar activities. HSWWW noted the application fee for Class I non-hazardous injection well permit applications is $100 per well, plus a notice fee of $50; Class I hazardous waste injection well permit application fees are $2,000 per well, plus a notice fee of $50; hazardous waste disposal facility permit application fees range from $2,000 to a maximum of $50,000; Railroad Commission of Texas oil and gas waste injection well application fees are $100 per well; and the Texas Department of State Health Services (TDSHS) NORM waste storage and processing license application fee is $9,999.

HSWWW commented that the proposed $25,000 annual fee is excessive when compared to other annual fees. HSWWW noted that the TDSHS has an annual fee of $9,999 for the commercial processing of NORM; the annual fee for Class I nonhazardous injection wells ranges from $500 to $5,000; hazardous waste facilities are subject to an annual fee ranging from $2,500 to $25,000. HSWWW commented that the annual fee for commercial NORM waste disposal facilities should be equivalent to the Class I nonhazardous waste facility annual fee.

HSWWW commented that the $10,000 license amendment fee is excessive when compared to amendment applications for similar activities. HSWWW noted that the amendment application fee for Class I nonhazardous injection well permits is $100 per well; the amendment application fee for a Class I hazardous injection well is $2,000 per well. HSWWW stated that it could not identify any other regulations that require the licensee or permittee to pay a license amendment application fee for commercial waste management activities. Accordingly, HSWWW expressed the belief that it is not necessary to implement a license amendment application fee applicable to commercial NORM waste disposal facilities.

The commission partially agrees with these comments. The commission is a fee-based agency; that is, the commission's costs are covered, in a large part, by the fees from the entities that the commission regulates. Some of the fees referenced by HSWWW, such as the $100 application fee for a Class I nonhazardous injection well, are set by statute and are far below the commission's actual cost for processing an application of this type. Other fees collected by the commission cover the actual cost of processing applications for Class I nonhazardous injection wells. Texas Health and Safety Code, §401.412(d), provides that the commission may assess and collect an annual fee for each license and registration and for each application in an amount sufficient to recover its reasonable costs. The proposed fees are based on estimates of the time required for various categories of employees to conduct activities related to licensing and inspection of regulated facilities. The proposed fees are consistent with the commission's actual cost of processing similar types of applications, and are therefore, not considered to be excessive. The commission's current fee structure for radioactive material licenses ranges from $10,000 per year for inspection and monitoring of an inactive buried waste site to $500,000 for an initial application fee for a low level radioactive waste disposal license. The commission recognizes that licensing and disposal costs incurred by water treatment facilities may be passed on and may result in increased costs to the consumer.

HSWWW stated that the DSHS NORM waste storage and processing license application fee is $9,999. This fee is actually $19,998 for a NORM commercial processing license as prescribed in 25 TAC §289.204(e)(32), and the fee is assessed every two years. A NORM waste commercial processing facility, otherwise known as a decontamination facility, is not directly comparable to a NORM waste disposal facility. A NORM waste decontamination facility is a temporary facility used for decontamination of equipment and the processing and/or storage of NORM waste. A NORM waste disposal facility is a permanent facility where the waste remains in place for perpetuity. Thus, the fees for these two distinct types of facilities are not directly comparable. The fees for a NORM waste disposal facility licensed by the commission would be more directly comparable to fees charged by the DSHS for an 11e.(2) by-product material disposal facility. DSHS charges $292,757 to process a new application for an 11e.(2) disposal facility. This is approximately

six times the $50,000 NORM waste disposal application fee proposed by the commission. DSHS charges a biennial fee of $95,202 for an operational 11e.(2) facility. On an annualized basis, this is approximately two times the $25,000 annual fee proposed by the commission.

The commission agrees that the renewal of a license requires a lesser degree of review than that required for processing a new license application; therefore, the fee required for the renewal of a license issued under Subchapters F and K has been reduced from $50,000 to $35,000 in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §336.1

STATUTORY AUTHORITY

The amendment is adopted under the Texas Radiation Control Act, THSC, Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to the control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; and §401.412, which provides authority to the commission to regulate and license the disposal of radioactive substances and to adopt rules necessary to exercise this authority. The amendment is also adopted under Texas Water Code, §27.019, which requires the commission to adopt rules reasonably required for the performance of the commission's duties under the Injection Well Act. The adopted amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The adopted amendment implements the Texas Radiation Control Act, THSC, Chapter 401; and the Injection Well Act, Texas Water Code, Chapter 27.

§336.1. Scope and General Provisions.

(a) Except as otherwise specifically provided, the rules in this chapter apply to all persons who dispose of radioactive substances, except by-product material defined by §336.2(13)(B) of this title (relating to Definitions).

(1) However, nothing in these rules shall apply to any person to the extent that person is subject to regulation by the United States Nuclear Regulatory Commission (NRC) or to radioactive material in the possession of federal agencies.

(2) Any United States Department of Energy contractor or subcontractor or any NRC contractor or subcontractor of the following categories operating within the state, is exempt from the rules in this chapter, with the exception of any applicable fee set forth in Subchapter B of this chapter, to the extent that such contractor or subcontractor under his contract receives, possesses, uses, transfers, or acquires sources of radiation:

(A) prime contractors performing work for the United States Department of Energy at a United States government-owned or controlled site, including the transportation of radioactive material to or from the site and the performance of contract services during temporary interruptions of transportation;

(B) prime contractors of the United States Department of Energy performing research in or development, manufacture, storage, testing, or transportation of atomic weapons or components thereof;

(C) prime contractors of the United States Department of Energy using or operating nuclear reactors or other nuclear devices in a United States government-owned vehicle or vessel; and

(D) any other prime contractor or subcontractor of the United States Department of Energy or the NRC when the state and the NRC jointly determine that:

(i) the exemption of the prime contractor or subcontractor is authorized by law; and

(ii) under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety or the environment.

(3) Radioactive material that is physically received from the federal government by a non-federal facility is subject to state jurisdiction except as provided in paragraph (2) of this subsection.

(4) The rules of this chapter do not apply to transportation of radioactive materials. This provision does not exempt a transporter from other applicable requirements.

(5) The rules in this chapter do not apply to the disposal of radiation machines as defined in this subchapter or electronic devices that produce non-ionizing radiation.

(b) Regulation by the State of Texas of source material, by-product material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the State of Texas and the NRC and to 10 Code of Federal Regulations Part 150 (10 CFR Part 150) (Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274). (A copy of the Texas agreement, "Articles of Agreement between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended" (Agreement), may be obtained from this commission.) Under the Agreement and 10 CFR Part 150, the NRC retains certain regulatory authorities over source material, by-product material, and special nuclear material in the State of Texas. Persons in the State of Texas are not exempt from the regulatory requirements of the NRC with respect to these retained authorities.

(c) No person may receive, possess, use, transfer, or dispose of radioactive material, which is subject to the rules in this chapter, in such a manner that the standards for protection against radiation prescribed in these rules are exceeded.

(d) Each person licensed by the commission under this chapter shall confine possession, use, and disposal of licensed radioactive material to the locations and purposes authorized in the license.

(e) No person may cause or allow the release of radioactive material, which is subject to the rules in this chapter, to the environment in violation of this chapter or of any rule, license, or order of the Texas Commission on Environmental Quality (commission).

(f) No person shall:

(1) dispose of low-level radioactive waste on site, except as authorized under §336.501(b) of this title (relating to Scope and General Provisions);

(2) receive low-level radioactive waste from other persons for the purpose of disposal, except for a person specifically licensed for the disposal of low-level radioactive waste;

(3) dispose of radioactive materials other than low-level radioactive waste, except for diffuse naturally occurring radioactive material waste having concentrations of less than 2000 pCi/g radium-226 or radium-228; or

(4) dispose of radioactive materials from other persons other than low-level radioactive waste, except for naturally occurring radioactive material waste in accordance with Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems).

(g) For the purpose of this chapter, any time the term "low-level radioactive waste" is used, the provision also applies to accelerator-produced radioactive material.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. RADIOACTIVE SUBSTANCE FEES

30 TAC §336.105

STATUTORY AUTHORITY

The amendment is adopted under the Texas Radiation Control Act, THSC, Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to the control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; and §401.412, which provides authority to the commission to regulate and license the disposal of radioactive substances and to adopt rules necessary to exercise this authority. The amendment is also adopted under Texas Water Code, §27.019, which requires the commission to adopt rules reasonably required for the performance of the commission's duties under the Injection Well Act. The adopted amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The adopted amendment implements the Texas Radiation Control Act, THSC, Chapter 401; and the Injection Well Act, Texas Water Code, Chapter 27.

§336.105. Schedule of Fees for Other Licenses.

(a) Each application for a license under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this chapter (relating to Decommissioning Standards), or Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems) must be accompanied by an application fee as follows:

(1) facilities regulated under Subchapter F of this chapter: $50,000;

(2) facilities regulated under Subchapter G of this chapter: $10,000; or

(3) facilities regulated under Subchapter K of this chapter: $50,000.

(b) An annual license fee shall be paid for each license issued under Subchapter F, Subchapter G, and Subchapter K of this chapter. The amount of each annual fee is as follows:

(1) facilities regulated under Subchapter F of this chapter: $25,000; or

(2) facilities regulated under Subchapter G of this chapter: $8,400; or

(3) facilities regulated under Subchapter K of this chapter: $25,000.

(c) An application for a major amendment of a license issued under Subchapter F, Subchapter G, or Subchapter K of this chapter must be accompanied by an application fee of $10,000.

(d) An application for renewal of a license issued under Subchapter F or Subchapter K of this chapter must be accompanied by an application fee of $35,000.

(e) Upon permanent cessation of all disposal activities and approval of the final decommissioning plan, holders of licenses issued under Subchapter F or Subchapter K of this chapter shall use the applicable fee schedule for subsections (b) and (c) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. GENERAL DISPOSAL REQUIREMENTS

30 TAC §336.211

STATUTORY AUTHORITY

The amendment is adopted under the Texas Radiation Control Act, THSC, Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to the control

of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; and §401.412, which provides authority to the commission to regulate and license the disposal of radioactive substances and to adopt rules necessary to exercise this authority. The amendment is also adopted under Texas Water Code, §27.019, which requires the commission to adopt rules reasonably required for the performance of the commission's duties under the Injection Well Act. The adopted amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The adopted amendment implements the Texas Radiation Control Act, THSC, Chapter 401; and the Injection Well Act, Texas Water Code, Chapter 27.

§336.211. General Requirements for Radioactive Material Disposal.

(a) Unless otherwise exempted, a licensee may dispose of licensed material, as appropriate to the type of licensed material, only:

(1) by transfer to an authorized recipient as provided in §336.331(g) and (h) of this title (relating to Transfer of Radioactive Material) or in Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste);

(2) by transfer to a recipient authorized in another state by license issued by the United States Nuclear Regulatory Commission or an Agreement State or to the United States Department of Energy;

(3) by decay in storage as authorized by law;

(4) by release in effluents within the limits specified in §336.313 of this title (relating to Dose Limits for Individual Members of the Public);

(5) as authorized under §336.213 of this title (relating to Method of Obtaining Approval of Proposed Disposal Procedures);

(6) as authorized under §336.215 of this title (relating to Disposal by Release into Sanitary Sewerage);

(7) as authorized under §336.223 of this title (relating to Disposal in Underground Injection Control Class I Injection Wells);

(8) as authorized under §336.225 of this title (relating to Disposal of Specific Wastes); or

(9) as specifically authorized by commission license issued under this chapter.

(b) A person must be specifically licensed to receive waste containing licensed material from other persons for:

(1) treatment prior to disposal;

(2) treatment by incineration;

(3) decay in storage;

(4) disposal at a land disposal facility; or

(5) disposal by injection in an underground injection control Class I injection well.

(c) The processing and storage of radioactive material is subject to applicable rules of the Department of State Health Services (DSHS), except as provided in subsection (d) of this section.

(d) The receipt, storage, and/or processing of radioactive materials, except for by-product material under the jurisdiction of the DSHS and oil and gas naturally occurring radioactive material waste, received at a licensed commercial radioactive material disposal facility for the explicit purpose of disposal at that facility shall be regulated in accordance with 25 TAC §289.101(d)(1) (relating to Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions).

(e) The on-site disposal of low-level radioactive waste is prohibited, except as provided by this section. The commission may, on request or its own initiative, authorize on-site disposal of low-level radioactive waste on a specific basis at any facility at which licensed low-level radioactive waste disposal operations began before September 1, 1989, if, after evaluation of the specific characteristics of the waste, the disposal site, and the method of disposal, the commission finds that the continuation of the disposal activity will not constitute a significant risk to public health and safety and to the environment. Persons subject to this subsection shall be licensed under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material).

(f) The disposal of low-level radioactive waste received from other persons is prohibited, except by a person who is specifically licensed under Subchapter H of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. LICENSING OF ALTERNATIVE METHODS OF DISPOSAL OF RADIOACTIVE MATERIAL

30 TAC §336.501

STATUTORY AUTHORITY

The amendment is adopted under the Texas Radiation Control Act, THSC, Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to the control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; and §401.412, which provides authority to the commission to regulate and license the disposal of radioactive substances and to adopt rules necessary to exercise this authority. The amendment is also adopted under Texas Water Code, §27.019, which requires the commission to adopt rules reasonably required for the performance of the commission's duties under the Injection Well Act. The adopted

amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The adopted amendment implements the Texas Radiation Control Act, THSC, Chapter 401; and the Injection Well Act, Texas Water Code, Chapter 27.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. DECOMMISSIONING STANDARDS

30 TAC §336.601

STATUTORY AUTHORITY

The amendment is adopted under the Texas Radiation Control Act, THSC, Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to the control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; and §401.412, which provides authority to the commission to regulate and license the disposal of radioactive substances and to adopt rules necessary to exercise this authority. The amendment is also adopted under Texas Water Code, §27.019, which requires the commission to adopt rules reasonably required for the performance of the commission's duties under the Injection Well Act. The adopted amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The adopted amendment implements the Texas Radiation Control Act, THSC, Chapter 401; and the Injection Well Act, Texas Water Code, Chapter 27.

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SUBCHAPTER K. COMMERCIAL DISPOSAL OF NATURALLY OCCURRING RADIOACTIVE MATERIAL WASTE FROM PUBLIC WATER SYSTEMS

30 TAC §§336.1001, 336.1003, 336.1005, 336.1007, 336.1009, 336.1011, 336.1013, 336.1015, 336.1017, 336.1019

STATUTORY AUTHORITY

The new sections are adopted under the Texas Radiation Control Act, THSC, Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to the control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; and §401.412, which provides authority to the commission to regulate and license the disposal of radioactive substances and to adopt rules necessary to exercise this authority. The new sections are also adopted under Texas Water Code, §27.019, which requires the commission to adopt rules reasonably required for the performance of the commission's duties under the Injection Well Act. The adopted new sections are also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The adopted new sections implement the Texas Radiation Control Act, THSC, Chapter 401; and the Injection Well Act, Texas Water Code, Chapter 27.

§336.1005. Disposal Method.

A person licensed for the commercial disposal of naturally occurring radioactive material (NORM) waste from public water systems may dispose of NORM waste only by injection into a Class I injection well permitted under Chapter 331 of this title (relating to Underground Injection Control) that is specifically permitted for the disposal of NORM waste.

§336.1007. License Application for Commercial Disposal of Naturally Occurring Radioactive Material Waste.

(a) In addition to other application requirements of this title, an applicant for a license to authorize commercial disposal of naturally occurring radioactive material (NORM) waste shall submit:

(1) a projected inventory of radionuclides in the wastes to be disposed and the estimated concentration, specific activity, and total radioactivity by radionuclide;

(2) the estimated frequency and volume of each disposal;

(3) a description of waste packaging and other waste acceptance criteria;

(4) a detailed description of the nonradiological constituents in the waste (e.g., hazardous wastes, metals, absorbents, acids, and chelating agents), including the chemical and physical characteristics of the waste;

(5) a site characterization, including:

(A) the identification of all soil layers by classification according to the Unified Soil Classification System, as described in the American Society for Testing and Materials standard D2487, *Standard Classification of Soils for Engineering Purposes (Unified Soil Classification System)*;

(B) a description of site stratigraphy from the surface to at least the base of the lower confining layer of the injection zone;

(C) a description of potential geologic hazards, including faulting, seismic activity, sink holes, solution depressions, geopressurized zones, and flooding, including identification of the 100-year floodplain;

(D) a description of applicable site hydrogeological data including:

(i) identification of aquifers and confining units, including depths, saturated intervals, overall thicknesses, lithologies, and environments of deposition;

(ii) the processes of recharge and discharge of site groundwaters;

(iii) porosities and hydraulic conductivities; and

(iv) hydraulic gradients, flow directions, and flow velocities;

(E) identification of water wells within a one-mile radius of the facility, including location, use (e.g., commercial, livestock, drinking water, etc.), total depth, aquifer, and screened interval;

(F) a description and analysis of surface water and surface drainage areas, including the location and identification of surface water bodies and wetlands and uses, if any;

(G) a description and analysis of local meteorological data, including hourly, daily, and/or monthly averages of precipitation, evapotranspiration, temperature, wind speed and direction, relative humidity, and atmospheric stability over annual and quarterly periods;

(H) maps and cross sections, as follows:

(i) United States Geological Survey (USGS) 7.5-minute topographic map(s);

(ii) Bureau of Economic Geology (BEG) Geologic Atlas of Texas map(s), or other site-specific surface geology map;

(iii) United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) soil map, or other site soil map;

(iv) potentiometric surface maps of all aquifers; and

(v) structural cross sections along dip and strike;

(I) area resources (e.g., local land use, locations of nearby residences, etc.);

(J) site performance history, including erosion, flooding, subsidence, etc.; and

(K) a summary of any past disposals, including inventories of any radiological parameters, and any observed effects;

(6) a description of the proposed design and construction of the NORM waste disposal facility;

(7) a description of the proposed design and construction of the final closed NORM waste disposal facility and of proposed closure procedures;

(8) information on the depth of NORM waste disposal and proposed operational and safety procedures for disposal of NORM waste;

(9) proposed inspection, maintenance, and emergency procedures;

(10) the applicant's radiological impact assessment consisting of modeling of radionuclide releases to site-specific critical exposure pathways and the projection of potential radiological doses to an individual on site and to a member of the public off site;

(11) proposed radiation safety procedures during operations and closure. Proposed procedures must include:

(A) administrative procedures;

(B) operating procedures;

(C) radiation safety program, including procedures for posting restricted areas, procedures for conducting surveys and monitoring, procedures for respiratory protection, procedures for worker protection and monitoring, and procedures for implementing controls to limit exposure in restricted areas;

(D) procedures for decontamination of equipment and facilities;

(E) industrial safety program; and

(F) quality assurance/quality control procedures;

(12) a description of proposed radiological monitoring of the site;

(13) the organizational structure of the applicant, a description of lines of authority and assignment of responsibilities, and technical qualifications of personnel responsible for radiation safety functions;

(14) information on the applicant's proposed methods of restricting access to the site (e.g., fencing) and proposed permanent site markers;

(15) proposed recordkeeping procedures, including electronic recordkeeping as required in §336.1015 of this title (relating to Maintenance of Records and Reports);

(16) information on land ownership and any covenants or restrictions on land use;

(17) the applicant's justification for the proposed disposal method; and

(18) a decommissioning plan that meets the standards in Subchapter G of this chapter (relating to Decommissioning Standards) including an evaluation of the alternatives to disposing of NORM waste at a licensed NORM waste disposal facility.

(b) The applicant shall submit sufficient information to allow the executive director to assess the potential hazard to public health and safety and to determine whether the NORM waste disposal facility will have a significant impact on the environment as required under §336.1011 of this title (relating to Performance Objectives).

(c) The applicant shall provide any other information that may be requested by the executive director.

§336.1009. Standards for Issuance of a License, License Amendment, or License Renewal.

A license, license amendment, or license renewal for the receipt, storage, processing, and disposal of naturally occurring radioactive material (NORM) waste from public water systems may be issued by the commission upon finding that the issuance of the license will not constitute an unreasonable risk to the health and safety of the public or have a long-term detrimental impact on the environment and that:

(1) the applicant is qualified by reason of training and experience to carry out the disposal operations requested in a manner that protects public health and safety and the environment;

(2) the applicant's proposed NORM waste disposal facility siting, design, construction, operation, and closure are adequate to protect the public health and safety in that the facility will provide reasonable assurance that the general population will be protected from releases of radioactivity as specified under §336.1011 of this title (relating to Performance Objectives);

(3) the applicant has provided reasonable assurance that the applicable technical requirements of this chapter will be met;

(4) the financial assurance meets the requirements of this chapter;

(5) the location of the NORM waste disposal facility is compatible with the uses of surrounding environs (both the applicant's and adjacent properties'); and

(6) the applicant meets all additional applicable requirements under the rules of the commission.

§336.1011. Performance Objectives.

(a) The performance objectives of this section apply to the naturally occurring radioactive material (NORM) waste disposal facility and any underground source of drinking water, as defined in §331.2 of this title (relating to Definitions), that may be impacted by activities at the NORM waste disposal facility. The performance objectives of this section do not apply to NORM waste in the injection zone as defined in §331.2 of this title.

(b) Radiation exposure and release of radioactive materials from a NORM waste disposal facility must be maintained as low as is reasonably achievable (ALARA). Concentrations of radioactive material that may be released to the general environment in groundwater, surface water, air, soil, plants, or animals must not result in an annual dose above background exceeding an equivalent of 25 millirems to the whole body, 75 millirems to the thyroid, or 25 millirems to any other organ of any member of the public.

(c) Operations at the NORM waste disposal facility must be conducted in compliance with the standards for radiation protection set out in Subchapter D of this chapter (relating to Standards for Protection Against Radiation), except for releases of radioactivity in effluents from the NORM waste disposal facility, which are governed by subsection (b) of this section. Analyses of the protection of individuals during operations must include assessments of expected doses due to routine operations and potential accidents during handling, storage, processing, and disposal of NORM waste.

(d) The location and characteristics of a NORM waste disposal facility must preclude potential off-site migration or transport of radioactive materials or ready access to critical exposure pathways.

(e) Pathways analyzed in demonstrating protection of the general population from releases of radioactivity must include air, soil, groundwater, surface water, plant uptake, and exhumation by animals.

(f) A NORM waste disposal facility for which authorization is requested under this subchapter must be located, designed, constructed, operated, and closed so that long-term isolation and custodial care for long-term stability will not be required beyond the time the licensee occupies the NORM waste disposal facility.

§336.1013. Terms and Conditions of License.

(a) At any time before termination of the license, the licensee shall submit written statements under oath upon request of the commission or executive director to enable the commission to determine whether or not the license should be modified, suspended, or revoked.

(b) The licensee is subject to the applicable provisions of Texas Health and Safety Code, Chapter 401, also known as the Texas Radiation Control Act (TRCA) now or hereafter in effect and to applicable rules and orders of the commission. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to the TRCA or by reason of rules and orders issued in accordance with terms of the TRCA.

(c) Any license may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required under provisions of the TRCA, or because of conditions revealed by any application or statement of fact or any report, record, or inspection or other means that would warrant the commission to refuse to grant a license on the original application, or for failure to operate the naturally occurring radioactive material (NORM) waste disposal facility in accordance with the terms of the license, or for any violation of or failure to observe any of the terms and conditions of the TRCA or the license or of any rule or order of the commission.

(d) Each person licensed by the commission under this subchapter shall confine possession and use of NORM waste to the locations and purposes authorized in the license.

(e) The licensee may not dispose of NORM waste at a NORM waste disposal facility until the licensee has submitted to the executive director by certified mail or hand delivery a letter signed by the licensee and a Texas licensed professional engineer stating that the NORM waste disposal facility has been constructed in compliance with the license and the application and the executive director has inspected the NORM waste disposal facility and finds it is in compliance with the conditions of the license and the application.

(f) The licensee may not receive NORM waste for disposal at the NORM waste disposal facility until the executive director has approved the licensee's financial assurance in writing.

(g) The commission may incorporate in any license at the time of issuance, or thereafter, by appropriate rule or order, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste as it deems appropriate or necessary in order to:

(1) protect the health and safety of the public and the environment; or

(2) require reports and recordkeeping and to provide for inspections of activities under the license that may be necessary or appropriate to effectuate the purposes of the TRCA and the rules adopted under the TRCA.

(h) Each license may be issued for an initial term of ten years from the date of issuance. After the initial ten years, the commission may renew the license for one or more terms of ten years. The authority to dispose of radioactive material expires on the date stated in the license. In any case in which a licensee has timely filed an application for renewal of a license, the authority for continued receipt and disposal

of licensed materials does not expire until the commission has taken final action on the application for renewal.

§336.1015. Maintenance of Records and Reports.

(a) Each licensee shall maintain any records and submit any reports required by the conditions of the license, by the rules in this chapter, or by orders of the commission. Copies of any records or reports required by the license, rules, or orders must be submitted to the executive director or commission upon request. All records and reports required by the license, rules, or orders must be complete and accurate.

(b) Records that are required by the rules in this chapter or by license conditions must be maintained for a period specified by the appropriate rules or by license condition. If a retention period is not otherwise specified, these records must be maintained and transferred to the executive director as specified in subsection (e) of this section as a condition of license termination unless the executive director otherwise authorizes their disposition.

(c) Each record required by this chapter must be legible throughout the specified retention period. The record must be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, must include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and the loss of records.

(d) If there is a conflict between the commission's rules, license condition, or other written approval or authorization from the executive director pertaining to the retention period for the same type of record, the longest retention period specified takes precedence.

(e) Notwithstanding subsections (a) - (d) of this section, the licensee shall record the location, the quantity of wastes, and the radioactivity content by radionuclide of waste disposed and shall transfer these records upon license termination to the executive director and to such other government agencies or officials as designated by the commission.

(f) The licensee shall maintain copies of waste manifests of shipments received at the disposal facility. Following receipt and acceptance of a shipment of naturally occurring radioactive material (NORM) waste, the licensee shall record the date that the shipment was received at the disposal facility; the date of disposal of the NORM waste; a traceable shipment manifest number; the containment integrity of the NORM waste disposal containers as received; any discrepancies between materials listed on the manifest and those received; the volume of any pallets, bracing, or other shipping materials, or of materials generated on site, that are contaminated and are disposed of as contaminated or suspect materials; and any evidence of leaking or damaged disposal containers or radiation or contamination levels in excess of limits specified in rules of the United States Department of Transportation or the Department of State Health Services. The licensee shall briefly describe any repackaging operations of any of the disposal containers included in the shipment, plus any other information required by the commission as a license condition. The licensee shall retain these records until the commission transfers or terminates the license that authorizes the activities described in this section.

(g) Each licensee authorized to dispose of NORM waste received from other persons shall file a copy of its financial report or a certified financial statement annually with the executive director in order to update the information base for determining financial qualifications.

(h) Annual reports must be submitted.

(1) Each licensee authorized to dispose of NORM waste received from other persons under this subchapter shall submit annual reports to the executive director. Reports must be submitted by the end of the first calendar quarter of each year for the preceding year.

(2) The annual reports must include:

(A) specification of the quantity of each radionuclide released to unrestricted areas in liquid and in airborne effluents during the preceding year;

(B) the results of the environmental monitoring program;

(C) a summary of radioactivities and quantities of radionuclides disposed of;

(D) any instances in which observed site characteristics were significantly different from those described in the application for a license; and

(E) any other information that the executive director may require.

(3) If the quantities of radioactive materials released during the reporting period, monitoring results, or maintenance performed are significantly different from those expected in the documents previously reviewed as part of the licensing action, the annual report must cover this specifically.

(i) An electronic recordkeeping system must be maintained. In addition to the other requirements of this section, the licensee shall store, or have stored, manifest and other information pertaining to receipt and disposal of NORM waste in an electronic recordkeeping system that is available for review by commission inspectors.

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Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 21, 2005
Proposal publication date: January 28, 2005
For further information, please call: (512) 239-5017

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) adopts without changes the rule review proposed for Title 4, Texas Administrative Code, Part 1, Chapter 4, concerning Cooperative Marketing Associations, Chapter 5, concerning Fuel Quality, and Chapter 6, concerning Seed Arbitration, pursuant to the Texas Government Code, §2001.039. The proposed notice of intent to review for Chapters 4, 5 and 6 was published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 3039). No comments were received on the proposal.

Section 2001.039 requires state agencies to review each of their rules every four years and consider the rules under review for readoption, revision or repeal. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposed the amendment of Title 4, Part 1, §4.2. The proposed amendment was also published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 2965). No comments were received on the proposed amendment.

The assessment of Title 4, Part 1, Chapters 4, 5 and 6 by the department at this time indicates that, with the addition of the adopted amendment to Chapter 4, §4.2, the original justification for the rules continues to exist and the department is readopting all remaining sections in Chapters 4, 5 and 6 without changes.

TRD-200502718
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: July 1, 2005

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The Texas Department of Agriculture (the department) adopts without changes the rule review proposed for Title 4, Texas Administrative Code, Part 1, Chapter 7, concerning Pesticides, pursuant to the Texas Government Code, §2001.039. The proposed notice of intent to review was published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 3039). No comments were received on the proposal.

Section 2001.039 requires state agencies to review each of their rules every four years and consider the rules under review for readoption, revision or repeal. The review must include an assessment of whether the original justification for the rules continues to exist.

The assessment of Title 4, Part 1, Chapter 7, conducted by the department at this time indicates that the original justification for the rules continues to exist and the department is readopting all sections in this chapter without changes.

TRD-200502702
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: July 1, 2005

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Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) readopts the administrative rules of 16 Texas Administrative Code (TAC), Chapter 68, Elimination of Architectural Barriers in accordance with the Texas Government Code, §2001.039. The Notice of Intent to Review was published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1645).

In accordance with the requirements of Texas Government Code, §2001.039, the Department reviewed the administrative rules of TAC Chapter 68, Elimination of Architectural Barriers to determine if the rules are obsolete, reflect current legal and policy considerations and reflect current procedures of the Department.

The Department's review has determined that the reasons for initially adopting the rules continue to exist. The rules are still essential in implementing the provisions of Texas Government Code, Chapter 469. However, based on comments received and the Department's review, the Department proposes that amendments be made which may be helpful in clarifying statutory and administrative rule requirements and bring the rules more in line with current law and Department procedures.

Recommended changes will be presented to the Architectural Barriers Advisory Committee for their review and consideration. Proposed changes will be published in the Proposed Rules Section of the *Texas Register* and will be open for public comment prior to final adoption or repeal by the Department in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The Notice of Intent to Review was distributed to persons internal and external to the agency. The public comment period closed on April 18, 2005. The Department received public comments from seven individuals and/or organizations with specific comments and suggested changes for consideration. The following is a summary of the public comments.

One commenter expressed generally that changes to the rules should bring the state accessibility standards into line with the new federal Americans with Disabilities Act Accessibility Guidelines (ADAAG). While the Department recognizes the importance of being consistent with federal standards, one should note that the ADAAG referenced by the commenter has not yet been adopted by the federal government through the rulemaking process. At this time the new ADAAG has no legal effect. However, the Department will continue to monitor the federal rulemaking process.

One commenter suggested updating the language of §68.20(e) related to exempting certain buildings or facilities of religious organizations.

One commenter suggested that accessibility inspections should be better coordinated with other permitting that occurs in the construction process.

One commenter suggested rule changes to clarify the role of the design professional and to revise certain time deadlines in the rules.

One commenter suggested rule changes and changes to the Texas Accessibility Standards (TAS) to address pedestrian elements at hazardous vehicular areas that are on-site, i.e., not in a public right of way. The commenter also suggested changes to provisions concerning detectable warnings.

The Texas Department of Transportation suggested the following changes: to define the term "completion of construction" in the context of road construction; to define "public right of way" in a manner that would include hike and bike trails; to define certain curb ramp terms; to place a 60-day time limit on the Department making a determination on variance applications; to clarify when inspections may be performed in the context of a roadway; and to update public right-of-way provisions, including those related to detectable warnings.

The Texas Registered Accessibility Specialist Association suggested the following changes: to require the person performing an inspection to possess the project file; to clarify the completion date of a project; to remove the requirement that an owner's designation of an agent be in writing; to clarify the deadline for filing a project registration form; to remove a requirement that the registered accessibility specialist verify ownership of a building or facility; to remove language relating to conditional approvals of construction documents; to require the building or facility owner to give written notice of any changes or delays in the completion date or cancellation of the project; to relocate and clarify a provision requiring an owner to pay an inspection fee and give notice of a point of contact; to remove the prohibition against a registered accessibility specialist submitting or preparing a variance application for a project in which he or she has provided review or inspection services; to clarify the definition of "renovation, modification, or alteration" and to clarify that a project with multiple phases is considered one project; to amend the variance procedure expressly to allow a request to postpone implementation of a standard; and to allow a registration confirmation page to substitute for a project registration form.

These comments are under consideration for possible rule changes. The Texas Accessibility Standards (TAS) itself is not part of this rule review, but any comments related to TAS will be considered in the context of any future revisions to TAS.

The rules are re-adopted in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC, Chapter 68.

TRD-200502720
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: July 1, 2005

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The Texas Department of Licensing and Regulation (Department) readopts the administrative rules of 16 Texas Administrative Code (TAC), Chapter 74, Elevators, Escalators, and Related Equipment in accordance with the Texas Government Code, §2001.039. The Notice of Intent to Review was published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1646).

In accordance with the requirements of Texas Government Code, §2001.039, the Department reviewed the administrative rules of TAC Chapter 74, Elevators, Escalators, and Related Equipment to determine if the rules were obsolete, reflected current legal and policy considerations and reflected current procedures of the Department.

The Department's review has determined that the reasons for initially adopting the rules continue to exist. The rules are still essential in implementing the provisions of Texas Health and Safety Code, Chapter 754. Based on the Department's review, however, the Department proposes that amendments be made which may be helpful in clarifying statutory and administrative rule requirements and bring them more in line with current law and Department procedures.

Recommended changes will be presented to the Elevator Advisory Board for its review and consideration. Proposed changes will be published in the Proposed Rules Section of the *Texas Register* and will be open for public comment prior to final adoption or repeal by the Department in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The Notice of Intent to Review was distributed to persons internal and external to the agency. The public comment period closed on April 18, 2005. No public comments were received.

The rules are re-adopted in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC, Chapter 74.

TRD-200502721
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: July 1, 2005

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The Texas Department of Licensing and Regulation (Department) readopts the administrative rules of 16 Texas Administrative Code (TAC), Chapter 75, Air Conditioning and Refrigeration Contractor License Law in accordance with the Texas Government Code, §2001.039. The Notice of Intent to Review was published in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1959).

In accordance with the requirements of Texas Government Code, §2001.039, the Department reviewed the administrative rules of TAC Chapter 75, Air Conditioning and Refrigeration Contractor License Law to determine if the rules were obsolete, reflected current legal and policy considerations and reflected current procedures of the Department.

The Department's review has determined that the reasons for initially adopting the rules continue to exist. The rules are still essential in implementing the provisions of Texas Occupations Code, Chapter 1302. Based on the Department's review, however, the Department proposes that amendments be made which may be helpful in clarifying statutory and administrative rule requirements and bring them more in line with current law and Department procedures.

Recommended changes will be presented to the Air Conditioning and Refrigeration Contractors Advisory Board for its review and consideration. Proposed changes will be published in the Proposed Rules Section of the *Texas Register* and will be open for public comment prior to final adoption or repeal by the Department in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The Notice of Intent to Review was distributed to persons internal and external to the agency. The public comment period closed on May 2, 2005. The Department received one public comment from an individual who, as an electrical licensee, was concerned the repeal of the HVAC rules would have a negative effect on the regulation of electricians.

The comment is under consideration for possible rule changes. The rules are re-adopted in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC, Chapter 75.

TRD-200502722
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: July 1, 2005

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 30 TAC §101.1(24)

AIR CONTAMINANT	ANNUAL	24-HOUR	8-HOUR	3-HOUR	1-HOUR
Inhalable Particulate Matter (PM_{10})	1.0 $\mu g/m^3$	5 $\mu g/m^3$			
Sulfur Dioxide	1.0 $\mu g/m^3$	5 $\mu g/m^3$		25 $\mu g/m^3$	
Nitrogen Dioxide	1.0 $\mu g/m^3$				
Carbon Monoxide			0.5 mg/m^3		2 mg/m^3

Figure: 34 TAC §73.21(e)
Benefits
Actuarial Reduction Factors for Nonoccupational Disability Retirements
Texas Government Code Section 814.206(f)

Age at Disability Retirement	Actuarial Reduction Factors for Applicable Retirement Age under Texas Government Code Section 814.102 or 814.104*														
	60	59	58	57	56	55	54	53	52	51	50	49	48	47	46
15	0.023	0.026	0.028	0.031	0.034	0.038	0.041	0.045	0.049	0.054	0.059	0.064	0.070	0.076	0.083
16	0.025	0.028	0.031	0.034	0.037	0.041	0.045	0.049	0.053	0.058	0.064	0.069	0.076	0.082	0.090
17	0.027	0.030	0.033	0.037	0.040	0.044	0.048	0.053	0.058	0.063	0.069	0.075	0.082	0.089	0.097
18	0.030	0.033	0.036	0.039	0.043	0.048	0.052	0.057	0.062	0.068	0.074	0.081	0.089	0.096	0.105
19	0.032	0.035	0.039	0.043	0.047	0.051	0.056	0.062	0.067	0.074	0.080	0.088	0.096	0.104	0.114
20	0.035	0.038	0.042	0.046	0.051	0.056	0.061	0.067	0.073	0.080	0.087	0.095	0.104	0.113	0.123
21	0.037	0.041	0.045	0.050	0.055	0.060	0.066	0.072	0.079	0.086	0.094	0.103	0.112	0.122	0.133
22	0.041	0.045	0.049	0.054	0.059	0.065	0.071	0.078	0.085	0.093	0.102	0.111	0.121	0.132	0.144
23	0.044	0.048	0.053	0.058	0.064	0.070	0.077	0.084	0.092	0.101	0.110	0.120	0.131	0.143	0.155
24	0.047	0.052	0.058	0.063	0.069	0.076	0.083	0.091	0.100	0.109	0.119	0.130	0.142	0.154	0.168
25	0.051	0.057	0.062	0.068	0.075	0.082	0.090	0.099	0.108	0.118	0.129	0.141	0.153	0.167	0.182
26	0.056	0.061	0.067	0.074	0.081	0.089	0.098	0.107	0.117	0.128	0.140	0.152	0.166	0.181	0.197
27	0.060	0.066	0.073	0.080	0.088	0.097	0.106	0.116	0.127	0.138	0.151	0.165	0.180	0.196	0.213
28	0.065	0.072	0.079	0.087	0.095	0.105	0.115	0.125	0.137	0.150	0.164	0.178	0.195	0.212	0.231
29	0.070	0.078	0.085	0.094	0.103	0.113	0.124	0.136	0.148	0.162	0.177	0.193	0.211	0.229	0.250
30	0.076	0.084	0.093	0.102	0.112	0.123	0.134	0.147	0.161	0.176	0.192	0.209	0.228	0.248	0.270
31	0.083	0.091	0.100	0.110	0.121	0.133	0.145	0.159	0.174	0.190	0.208	0.227	0.247	0.269	0.293
32	0.089	0.099	0.109	0.119	0.131	0.144	0.158	0.172	0.189	0.206	0.225	0.245	0.267	0.291	0.317
33	0.097	0.107	0.118	0.129	0.142	0.156	0.171	0.187	0.204	0.223	0.244	0.266	0.290	0.316	0.344
34	0.105	0.116	0.127	0.140	0.154	0.169	0.185	0.202	0.221	0.242	0.264	0.288	0.314	0.342	0.373
35	0.114	0.125	0.138	0.152	0.167	0.183	0.200	0.219	0.240	0.262	0.286	0.312	0.340	0.371	0.404
36	0.123	0.136	0.150	0.165	0.181	0.198	0.217	0.238	0.260	0.284	0.310	0.338	0.369	0.402	0.438
37	0.134	0.148	0.162	0.179	0.196	0.215	0.236	0.258	0.282	0.308	0.336	0.367	0.400	0.436	0.475
38	0.145	0.160	0.176	0.194	0.213	0.233	0.256	0.280	0.306	0.334	0.365	0.398	0.434	0.473	0.515
39	0.157	0.174	0.191	0.210	0.231	0.253	0.277	0.304	0.332	0.363	0.396	0.432	0.471	0.513	0.559
40	0.171	0.188	0.207	0.228	0.251	0.275	0.301	0.330	0.360	0.394	0.430	0.469	0.511	0.557	0.606
41	0.186	0.205	0.225	0.248	0.272	0.298	0.327	0.358	0.391	0.427	0.467	0.509	0.555	0.605	0.658
42	0.202	0.222	0.245	0.269	0.295	0.324	0.355	0.389	0.425	0.464	0.507	0.553	0.603	0.657	0.715
43	0.219	0.242	0.266	0.292	0.321	0.352	0.386	0.422	0.462	0.505	0.551	0.601	0.655	0.714	0.777
44	0.238	0.263	0.289	0.318	0.349	0.383	0.419	0.459	0.502	0.549	0.599	0.653	0.712	0.776	0.845
45	0.259	0.286	0.314	0.346	0.380	0.416	0.456	0.499	0.546	0.597	0.651	0.711	0.775	0.844	0.919
46	0.282	0.311	0.342	0.376	0.413	0.453	0.496	0.543	0.594	0.649	0.709	0.773	0.843	0.918	1.000
47	0.307	0.338	0.373	0.410	0.450	0.493	0.541	0.592	0.647	0.707	0.772	0.842	0.918	1.000	1.000
48	0.334	0.369	0.406	0.446	0.490	0.537	0.589	0.645	0.705	0.770	0.841	0.917	1.000	1.000	1.000
49	0.364	0.402	0.442	0.486	0.534	0.586	0.642	0.703	0.768	0.840	0.917	1.000	1.000	1.000	1.000
50	0.398	0.438	0.483	0.531	0.583	0.639	0.700	0.767	0.838	0.916	1.000	1.000	1.000	1.000	1.000
51	0.434	0.479	0.527	0.579	0.636	0.698	0.765	0.837	0.915	1.000	1.000	1.000	1.000	1.000	1.000
52	0.474	0.523	0.576	0.633	0.695	0.762	0.835	0.914	1.000	1.000	1.000	1.000	1.000	1.000	1.000
53	0.519	0.572	0.630	0.692	0.760	0.834	0.914	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
54	0.568	0.626	0.689	0.758	0.832	0.913	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
55	0.622	0.686	0.755	0.830	0.912	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
56	0.682	0.752	0.828	0.911	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
57	0.749	0.826	0.910	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
58	0.824	0.908	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
59	0.907	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
60+	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000

* Actuarial reduction factors determined using 1994 Group Annuity Mortality Table (50% Male/50% Female) and 8% interest.

Applicable Retirement Age under Texas Government Code Section 814.102 is the earlier of (1) age 60 with at least 8 years of elected class service or (2) age 50 with at least 12 years of elected class service.
Applicable Retirement Age under Texas Government Code Section 814.104 is the earliest of (1) age 60 with at least 5 years of employee class service, (2) at least 5 years of employee class service and age plus service equals at least 80 or (3) age 55 with at least 10 years of service as a law enforcement or custodial officer.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Office of the Attorney General, announces the issuance of **Request for Proposals (RFP) #303-5-11203**. TBPC seeks a five year lease of approximately 3,866 square feet of office space in Dallas, Dallas County, Texas.

The deadline for questions is July 15, 2005 and the deadline for proposals is July 22, 2005 at 3:00 P.M. The award date is August 15, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=59784.

TRD-200502700
Kenneth Ming
Purchaser
Texas Building and Procurement Commission
Filed: June 30, 2005

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Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Transportation (TxDOT), announces the issuance of **Request for Proposals (RFP) #303-5-10910-A**. TBPC seeks a 5 year lease of approximately 3,110 square feet of office space in the San Antonio area, Bexar County, Texas.

The deadline for questions is July 20, 2005, and the deadline for proposals is July 26, 2005 at 3:00 P.M. The award date is August 15, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=59808.

TRD-200502725
Kenneth Ming
Purchaser
Texas Building and Procurement Commission
Filed: July 1, 2005

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 24, 2005, through June 30, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on July 6, 2005. The public comment period for these projects will close at 5:00 p.m. on August 5, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Gemelos Investments; Location: The project is located on Copano Bay at 5441 FM 1781, in Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Rockport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 691790; Northing: 3111043. Project Description: The applicant proposes to revamp and improve an existing earthen T-head. Improvements include the repair/replacement of an existing bulkhead and stabilization of existing riprap. Improvements also include the construction of boat slips, a 15- by 35-foot boat ramp, an asphalt drive, and covered picnic areas. The purpose of the project is to provide a single pier for seven or eight private homes. The pier would be for private use only and will solely provide docking for homeowners' boats. The T-head improvement project would require the removal of the western end of an existing 142-foot by 167-foot earthen T-head. The integrity of the existing wooden bulkhead has been compromised over the last several years and the land has washed away from behind it. The applicant proposes to construct a new vinyl sheet-pile bulkhead immediately in front of the existing north and south wooden bulkhead and rebuild the west bulkhead 36.5 feet behind its existing location. Once the new bulkhead is constructed, the applicant proposes to place approximately 116 cubic yards of clean fill material below Mean High Water (MHW) so that it covers approximately 3,130 square feet behind the bulkhead to form a square-shaped land mass. The T-head improvements include construction of two 4-foot by 55-foot walkways, and one 4-foot by 75-foot wooden walkway. Each of the 4-foot by 55-foot walkways would have four 2-foot by 30-foot finger piers with pilings between them to form boat slips. The pier and walkway configuration would accommodate a total of 20 vessels. The boat docking structures would be constructed over unvegetated bay bottom consisting of sand and shell where water depths transition from -2.0 to -5.0 feet MHW. Other improvements include reworking and augmenting existing riprap along the T-head driveway; however the footprint of the riprap area would not change substantially. CCC Project No.: 05-0338-F1; Type

of Application: U.S.A.C.E. permit application #23806 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Martin Midstream Partners; Location: The project is located in the Neches River, central to Corps of Engineers Station 800+00, at #1 Gulf States Road, 41/2 miles southeast of Beaumont, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 400600; Northing: 3325700. Project Description: The applicant proposes to amend Permit No. 16483(03) to add a bulk material handling system. The system will be constructed directly between the existing dock and the shoreline. The bulk material handling system will consist of a crane, crane railway, and support structures. The applicant also requests an extension of time on the previously approved 10-year maintenance dredging. Permit 16483, issued on May 10, 1983, authorized the dredging of an area approximately 1,500 feet long to a depth of -34 feet mean low tide. It also authorized the use of Corps of Engineers Dredge Placement Area (DPA) Number 25. Amendment (01), issued on April 2, 1986, authorized an extension of time to complete work and authorized the dredging of approximately 25,000 cubic yards of material from an area east of and adjacent to the originally permitted dredge area. This amendment also authorized the installation of two T-head docks, three dolphins, and three individual pilings. Amendment (02), issued on March 22, 1995, extended the time to complete the work and authorized maintenance dredging for a period of 10 years. This amendment also authorized the construction of a new dock, consisting of four breasting dolphins, four mooring dolphins, connecting walls, and four protection dolphins; dredging to a depth of -42 feet mean low tide; and the use of Corps of Engineers DPA's 23, 24, 25, 26, and 27A. CCC Project No.: 05-0348-F1; Type of Application: U.S.A.C.E. permit application #16483(04) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200502736
Trace Finley
Policy Director
Coastal Coordination Council
Filed: July 5, 2005

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 403, Texas Government Code, and Chapter 2254, Subchapter A, Texas Government Code; and Chapters 72-75, Property Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP #172L) from qualified, independent firms to provide professional out-of-state unclaimed property auditing services to Comptroller. One or more successful respondents will assist Comptroller in conducting audits of out-state-unclaimed property holders and providing other related services, as directed by Comptroller. Comptroller reserves the right to award one or more contracts under this RFP. The successful respondent(s), if any, will be expected to begin performance of the contract(s), if any, awarded under this RFP on or about September 1, 2005.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, July 15, 2005, between 10:00 a.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller will also make the complete RFP available electronically on the Texas Marketplace on or after Friday, July 15, 2005, 10:00 a.m. (CZT).

All written inquiries, questions, and Non-mandatory Letters of Intent to propose must be received in the Issuing Office prior to 2 p.m. (CZT) on Friday, July 29, 2005. Prospective respondents are encouraged to fax Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The responses to questions and other information pertaining to this procurement will be posted on August 1, 2005, or as soon thereafter as practical, on the Texas Marketplace at: http://www.marketplace.state.tx.us. Questions and inquiries received after the deadline will not be considered; respondents are solely responsible for verifying timely receipt in the Issuing Office of Letters of Intent and Questions.

Closing Date: Proposals must be received in the Issuing Office at the location specified above no later than 2 p.m. (CZT), on Friday, August 5, 2005. Proposals received in the Issuing Office after this time and date will not be considered; respondents are solely responsible for verifying timely receipt of Proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall pay for no costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - July 15, 2005; Non-Mandatory Letters of Intent and Questions Due - July 29, 2005, 2 p.m. CZT; Official Questions and Responses posted - August 1, 2005 (or as soon thereafter as practical); Proposals Due - August 5, 2005, 2 p.m. CZT; Contract Execution - September 1, 2005, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2005.

TRD-200502744
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: July 6, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009 of the Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/11/05 - 07/17/05 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/11/05 - 07/17/05 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200502734
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 5, 2005

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Texas Commission on Environmental Quality

Notice of Amendments to the Air Quality Standard Permit for Temporary Rock and Temporary Concrete Crushers

The Texas Commission on Environmental Quality (TCEQ or commission) is issuing amendments to the air quality standard permit for temporary rock crushers and temporary concrete crushers. The amendments to the air quality standard permit became effective July 5, 2005. The amendments implement changes associated with House Bill (HB) 1287, 78th Texas Legislature, 2003, which modified provisions of the Texas Clean Air Act (TCAA) relating to distance limits for concrete crushers (Texas Health and Safety Code (THSC), §382.065). The standard permit was amended to maintain consistency with the revised TCAA language. These amendments also include several technical and administrative improvements and corrections.

OVERVIEW OF AIR QUALITY STANDARD PERMIT AMENDMENTS

The commission is issuing amendments to the standard permit for temporary rock and temporary concrete crushers under THSC, §382.05195 and 30 TAC Chapter 116, Subchapter F, Standard Permits. The amendments are needed to maintain consistency with THSC, §382.065, as modified by HB 1287 passed in the 78th Texas Legislature. The changes relating to HB 1287 modify the applicability of distance limitations to concrete crushing facilities, and specify the method for taking the distance measurement. These changes specify that the commission shall prohibit operation of a concrete crushing facility within 440 yards of a building in use as a school, residence, or place of worship, at the time the application for a permit to operate the facility is filed with the commission. The amendments also clarify that the 440-yard distance limit would not apply to cases where a concrete crushing facility originally met the 440-yard distance requirement, but subsequent construction of residences, schools, or places of worship occurred within a 440-yard radius. The revisions to THSC, §382.065 also exempted certain concrete crushing facilities involved in demolition projects from the 440-yard distance limitation, and the amendments incorporate this exemption into the standard permit.

The commission is also issuing other technical and administrative amendments to improve readability, flexibility, and enforceability of this standard permit. Requirements concerning emission limits, control requirements, and recordkeeping have not changed substantially. A new provision eliminates the availability of the standard permit to owners or operators who apply for a permit for permanent or extended operation. The standard permit was intended to authorize temporary operations and the commission has determined, based in part on concern from the general public, that use of this standard permit to obtain initial authorization for permanent facilities is not appropriate.

PUBLIC NOTICE AND COMMENT PERIOD

In accordance with §116.605, the TCEQ published notice of the proposed amended standard permit in the July 16, 2004, issue of the *Texas Register* (29 TexReg 6977). The notice was also published in the newspapers of the largest general circulation in Austin, Houston and Dallas on July 16, 2004. The comment period closed on August 20, 2004.

PUBLIC MEETING

A public meeting on the proposed amendments was held on August 20, 2004, at 10:00 a.m., at the TCEQ, Building F, Room 2210, 12100 Park 35 Circle, Austin, Texas. No one elected to submit verbal or written comments at the meeting.

ANALYSIS OF COMMENTS

Written comments were received from the Sierra Club Houston Regional Group (SCHRG) and from Texas Industries, Inc. (TXI).

SCHRG commented that it opposed the proposed language in subsection (1)(B), which deletes the reference to associated sources. The proposed language only refers to concrete crushing facilities. SCHRG stated that associated sources can create heavy particulate emissions.

The commission acknowledges that associated sources are sources of particulate emissions. However, the 440-yard distance limit and associated standard permit language are based on the requirements of THSC, §382.065, as modified by HB 1287. The language in THSC, §382.065 only refers to concrete crushing facilities. The commission intends that the language in the standard permit be as consistent as possible with the corresponding requirements in THSC, §382.065. Associated sources remain subject to the 200-foot distance limitation for Tier I crushers, or the 300-foot distance limitation for Tier II crushers, and these distance limitations are protective. The commission will maintain the proposed language.

SCHRG commented that it opposed the proposed provision in subsection (1)(C)(i), which states that the 440-yard distance limitation does not apply to cases where a concrete crushing facility originally met the 440-yard limit, but subsequent construction of residences, schools, or places of worship took place within the 440-yard limit. SCHRG commented that this may allow nuisances to exist.

This provision is necessary for consistency with THSC, §382.065, as amended by HB 1287. The applicable 200-foot or 300-foot distance limitation would still apply. Nuisance conditions would still be subject to enforcement under 30 TAC §101.4. The commission will maintain the proposed provision.

TXI commented that the requirement for screen sides and conveyors to be covered should not be necessary for facilities handling saturated rock or gravel. TXI also commented that a permanent spray bar should not be required at the inlet of a crusher which is processing fully saturated rock, gravel, or sand.

Although emissions from these facilities may be reduced when processing saturated rock, gravel, or sand, the standard permit is intended to cover a broad range of facility configurations and operating conditions. In order to ensure continuous compliance with all TCEQ regulations, ensure that the standard permit is practically enforceable, and to protect public health and welfare, the commission will maintain the requirement for enclosed conveyors and screens, and the requirement for a spray bar.

TXI commented that subsection (1)(D), renumbered as subsection (1)(F), should clarify that plant entrances and exits are not subject to the property line visible emission limitation.

The commission does not agree with this comment. In-plant roads, including entrances and exits, are subject to the visible emission standard. The commission declines to alter the proposed language.

TXI commented on subsection (1)(O), renumbered as subsection (1)(Q). TXI commented that a site should be allowed to add a Tier II temporary crusher to a site which has an existing crusher, if the site meets the Tier II distance limitations and other Tier II requirements, or if all of the other equipment is handling fully saturated rock.

The commission does not agree with this comment. The purpose of this standard permit is to authorize a single crushing operation, and modeling was based on that scenario. Further, the standard permit was intended to authorize temporary crushing operations at construction sites, subdivision developments, and road and highway projects, where multiple crushing operations do not occur simultaneously. The prohibition against locating at a site with another crusher is needed to ensure compliance with all TCEQ regulations and to ensure protection of public health and welfare. The commission will maintain this requirement.

TXI commented that the proposed amendments to subsections (2)(F) and (3)(E), which specify limits on the number of days a crusher could be located at a site, would place an undue burden on industry. TXI stated that the proposed amendments do not take into account factors such as inclement weather, equipment failures, or personnel issues. TXI stated that TCEQ could propose language which would provide a waiver or time extension when adverse weather or other unusual circumstances occur.

The amendments to these subsections are intended to clarify the meaning of the 45-day and 180-day time limits. These time limits have always been intended to mean the number of days the equipment is at a site, rather than just the number of days the equipment is operated. During development of the original standard permit, the number of allowed days was increased from 20 days to 45 days for Tier I units, and from 60 days to 180 days for Tier II units, partly in consideration of factors such as adverse weather and mechanical difficulties. The commission does not agree that an additional extension or waiver is necessary.

TXI recommended that a number of sections be revised to provide flexibility for storage of non- operational crushing equipment. TXI recommended modifying the requirement to remove crushing equipment from a site within 24 hours of ceasing operation, to instead require that the crusher be placed in a non-operational configuration within 24 hours of ceasing operation.

Temporary rock crushers are often engineered to allow quick transport, installation, and setup. This portability and simplicity of operation makes it difficult to distinguish between passive storage of such equipment, and construction or operation of the equipment. The requirement to remove the crushing equipment is the most practical method to ensure compliance with the standard permit. The commission declines to alter these requirements.

Copies of the standard permit for temporary rock and concrete crushers may be obtained from the TCEQ Web site at *http://www.tnrcc.state.tx.us/permitting/airperm/nsr_permits/athrize.htm#stdpmt* or by contacting the TCEQ, Office of Permitting, Remediation, and Registration, Air Permits Division at (512) 239-1250.

TRD-200502729

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 5, 2005

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 101 and the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct public hearings to receive testimony concerning revisions to 30 TAC Chapter 101, General Air Quality Rules, and corresponding revisions to the state implementation plan (SIP), under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The proposed amendments to §§101.1, 101.201, 101.211, 101.221 - 101.223 would revise and add definitions, and revise notification and reporting requirements, and demonstration criteria for emissions events, scheduled maintenance, startup, and shutdown activities. The proposed rulemaking would also provide for an affirmative defense for certain emissions from scheduled maintenance, startup, and shutdown activities. It would also implement House Bill 2129, §1, 79th Legislature, 2005.

Public hearings for this proposed rulemaking have been scheduled for the following dates: August 2, 2005, at 2:00 p.m., in Austin, TCEQ complex, Building C, Room 131E, 12100 Park 35 Circle; August 3, 2005, at 10:00 a.m., in Arlington, North Central Texas Council of Governments, Transportation Board Room, 3rd Floor, 616 Six Flags Drive; August 4, 2005, at 7:00 p.m., in Houston, City of Houston Council Chambers, 2nd Floor, 901 Bagby; August 5, 2005, at 1:00 p.m., in Corpus Christi, Texas A&M-Corpus Christi Campus, Natural Resources Center Building, Room 1003, 6300 Ocean Drive; and August 8, 2005, at 10:00 a.m., in Midland, UT of the Permian Basin, Center for Energy and Economic Diversification Building, 1400 North FM 1788.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services at (512) 239- 6087. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239- 4808. All comments should reference Rule Project Number 2005-024-101-CE, and must be received by 5:00 p.m., August 8, 2005. For further information, please contact Ramiro Garcia, Field Operations Division at (512) 239-4481 or Steve Ligon, Field Operations Division at (512) 239-1527.

TRD-200502712

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 1, 2005

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Notice of Texas Nonpoint Source Management Program Update

In accordance with Clean Water Act (CWA), §319(b), states are required to develop and update a report every five years that identifies management measures that will be undertaken to reduce and prevent

pollutant loadings from nonpoint source (NPS) pollution. This document is known as the *Texas NPS Management Program*.

The following is a summary of the document: Chapters 1 and 2 summarize how the commission implements the United States Environmental Protection Agency's nine key elements of a state NPS management plan. These two chapters present the long- and short-term goals Texas uses to restore and protect water quality, including the milestones by which progress is assessed. Chapter 3 details the watershed approach that Texas uses as its management strategy. Chapter 4 provides a description of the agencies and organizations that address water quality issues within the state. Chapters 5 - 8 give in-depth descriptions of the numerous programs and best management practices implemented by the agencies and organizations that address NPS water quality assessment, implementation, and education. The appendices provide supplemental information and references to further support the management strategies described in preceding chapters.

The Texas NPS Management Program document is available for viewing at the following Web site: *http://www.tnrcc.state.tx.us/water/quality/nps/stakeholder/nps_stakeholders.html*. For questions regarding this document, contact Laurie Curra at (512) 239-4627, Monitoring Operations Division of the Office of Compliance and Enforcement, Texas Commission on Environmental Quality.

TRD-200502735
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 5, 2005

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Notice of Water Quality Applications

The following notices were issued during the period of June 21, 2005 through June 27, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

BROWNSVILLE NAVIGATION DISTRICT which operates a marine cargo handling facility at the Port of Brownsville, has applied for a renewal of Permit No. WQ0002597000, which authorizes the disposal of ballast water and bilge water from ocean-going vessels or vessels being dismantled in the port area, wastewater from storage tanks for crude petroleum, kerosine and diesel fuel, clean up of petroleum spills on water, and wastewater containing oily wastes from the sewage treatment plant and/or vegetable oil handling activities at a daily average flow not to exceed 100,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and evaporation ponds are located on the north side of State Highway 48 at points approximately 1.4 miles (Pit No. 2) and 4 miles (Pit No. 1) east of the intersection of Old State Highway 48 and Farm-to Market Road 511, northeast of the City of Brownsville, Cameron County, Texas.

BROWNSVILLE NAVIGATION DISTRICT has applied for a renewal of TPDES Permit No. 10332-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 98,000 gallons per day. The facility is located on the east side of the Marathon-Le Tourneau Company Plant which is located on the south side of State Highway 48, approximately 3.9 miles east of the intersection of State Highway 48 with Farm-to-Market Road 511, northeast of the City of Brownsville in Cameron County, Texas.

CITY OF BURNET has applied for a major amendment to TPDES Permit No. 10793-002 to authorize an increase in the irrigation area to 548 acres and reauthorize land application of sewage sludge on 328 acres of land owned by the city. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 726,000 gallons per day. The facility is located approximately 1400 feet southeast of Southern Pacific Railroad Bridge crossing Hamilton Creek in Burnet County, Texas. The existing effluent disposal site is located adjacent to the wastewater treatment facility. The proposed effluent disposal sites will be located at the Delaware Springs Golf Course, which is approximately two miles south of the City of Burnet off of U.S. Highway 281 and next to the Burnet Municipal Airport; and at the Burnet Municipal Airport and the Galloway/Hammond baseball fields, which are located approximately one mile south of the City of Burnet off of U.S. Highway 281. The sludge disposal sites are located at the Burnet Municipal Airport and on fields adjacent to the wastewater treatment facility.

CITY OF CANADIAN has applied for a renewal of TPDES Permit No. 14259-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day. The facility is located northeast of the City of Canadian, approximately 0.5 miles east of U.S. Highway 60 and one mile north of Farm-to-Market Road 2388 at the east end of the fairgrounds in Hemphill County, Texas.

CROCKETT COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied to for a renewal of TPDES Permit No. 10059-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 22-acres of native grassland located on the wastewater treatment plant site. The facility is located approximately 3,000 feet west of the State Highway 163 and approximately 2.5 miles south of the Interstate Highway 10 in Crockett County, Texas.

CROCKETT COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of Permit No. 10059-002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 10,500 gallons per day via surface irrigation of 3.6 acres of non-public access grassland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located 0.4 mile north of Interstate Highway 10 at a point approximately 1.1 mile west of the intersection of Loop 466 and State Highway 163 in the City of Ozona in Crockett County, Texas.

CROCKETT COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of Permit No. 10059-003, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 0.5 mile north of Interstate Highway 10 at a point approximately 5 miles east of the intersection of State Highway 163 and Interstate Highway 10 in Crockett County, Texas.

DAIRY FARMERS OF AMERICA, INC. which operates Pokluda Farms receives a semisolid mixture generated from the treatment of wastewater associated with the production of processed cheese and salsa products at the Schulenburg dairy plant, has applied for a renewal of Permit No. WQ0004252000, which authorizes the disposal of a semisolid mixture generated from vegetable and cheese processing by application on 35 acres of bermuda grass and corn at an application rate not to exceed 0.06 acre-feet per year per acre applied. This permit

will not authorize a discharge of pollutants into water in the State. The Schulenburg dairy plant is located at 801 James Avenue, in the City of Schulenburg, Fayette County Texas. The 35-acre disposal site is located approximately ten miles west of State Highway 90, three miles south of Farm-to-Market Road 1295, 1.5 miles west of County Road 321, and one mile west of County Road 319 on the Pokluda Farm near the City of Schulenburg, Fayette County, Texas.

CITY OF DONNA has applied for a renewal of TPDES Permit No. 10504-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,700,000 gallons per day. The facility is located immediately west of Farm-to-Market Road 493 and approximately 1.5 miles south of U.S. Highway 83 (Business Route) in Hidalgo County, Texas.

E.I. DU PONT DE NEMOURS AND COMPANY, INC. which operates the Corpus Christi Plant, an industrial organic and inorganic chemicals manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0001651000, which authorizes the discharge of process wastewater, treated domestic wastewater, utility water, groundwater, laboratory wastewater, dismantling operation wastewater, equipment wash water, and storm water at a daily average flow not to exceed 4,610,000 gallons per day via Outfall 001; and storm water runoff on an intermittent and flow variable basis via Outfall 002. The draft permit authorizes the discharge of process wastewater, domestic wastewater, utility water, groundwater, laboratory wastewater, dismantling operation wastewater, equipment wash water, and storm water at a volume not to exceed a daily average flow of 4,610,000 gallons per day via Outfall 001; and hydrostatic test water, noncontact steam condensates, and storm water runoff on an intermittent and flow variable basis via Outfall 002. The facility is located on the south side of State Highway 361, approximately 1.25 miles east of the intersection of State Highway 361 and State Highway 35, southeast of the City of Gregory, San Patricio County, Texas

THE CITY OF GEORGE WEST has applied for a renewal of TPDES Permit No. 10455-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 539,000 gallons per day. The facility is located on the north side of Timon Creek 500 feet east-southeast of the intersection of U.S. Highway 59 (By-Pass) and the Missouri Pacific Railroad, and approximately 3,000 feet northeast of the intersection of U.S. Highway 59 (By-Pass) and U.S. Highway 281 in Live Oak County, Texas.

HARLINGEN SHRIMP FARMS, LTD. which operates an aquaculture shrimp and fish production facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0003946000, which authorizes the discharge of wastewater from an aquaculture facility at an annual average flow not to exceed 8,000,000 gallons via Outfall 001. The facility is located adjacent to Centerline Road, approximately two miles east of the intersection of Centerline Road and Buena Vista Road and approximately eight miles east of the community of Bayview, Cameron County, Texas.

INTERSTATE SOUTHWEST, LTD. which operates an iron and steel forging facility, has applied for a renewal of TPDES Permit No. WQ0004073000, which authorizes the discharge of once through cooling water, boiler blowdown, wash down water, and storm water at a daily average dry weather flow not to exceed 500,000 gallons per day via Outfall 001. The facility is located adjacent to the west side of the Texas and New Orleans Railroad, with an entrance roadway off State Loop 508, approximately four miles north-west of the intersection of State Highway 6 and Farm-to-Market Road 1227, and approximately three miles south of the City of Navasota, Grimes County, Texas.

KELLOGG BROWN & ROOT, INC. which operates the Greens Bayou Fabrication Yard, a facility which fabricates jackets and decks for offshore petroleum exploration and production structures, has applied for a renewal of TPDES Permit No. WQ0003792000, which authorizes the discharge of wash water and domestic wastewater at a daily average flow not to exceed 30,000 gallons per day via Outfall 001. The facility is located at 14035 Industrial Road, approximately 2.4 miles southeast of the intersection of Federal Road and Interstate Highway 10, in unincorporated Harris County, Texas.

CITY OF LA FERIA has applied for a renewal of TPDES Permit No. 10697-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 1.7 miles south of the intersection of Farm-to-Market Road 506 with U.S. Highway 83, then west along Dodd Land approximately 1,000 feet in Cameron County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 10 has applied for a renewal of TPDES Permit No. 14130-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 48,000 gallons per day. The facility is located at 24500 U.S. Highway 290, southeast of the Town of Cypress, north of the U.S. Highway 290 Cypress Creek bridge and on the east side of Dry Creek in Harris County, Texas.

ST. DOMINIC FISHERIES which operates an aquaculture facility for the commercial grow-out of Hybrid Striped Bass (HSB) and other species for a food source, has applied for a renewal of TPDES Permit No. WQ0004063000, which authorizes the discharge of aquaculture wastewater at an annual average flow not to exceed 200,000 gallons per day via Outfall 001. The facility is located three miles south of the intersection of State Highway 35 and State Highway 3280, one-mile west of Farm-to-Market Road 3280, and ten miles southwest of the City of Palacios, Calhoun County, Texas.

ST. PAUL WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 14119-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located on the northwest corner of the intersection of Second Street and County Road 26B, approximately 2,000 feet west of State Highway 181 in San Patricio County, Texas.

SAN MIGUEL ELECTRIC COOPERATIVE, INC. which operates a lignite mine, has applied for a major amendment to TPDES Permit No. WQ0002043000 to authorize the discharge of mine depressurization water via Outfalls 001 and 002; the use of mine depressurization water for dust suppression; and the addition of Outfalls 003, 004, 005, 006, and 007 discharging storm water on an intermittent and flow variable basis. The current permit authorizes the discharge of mine pit water and storm water runoff from ponds in the "active mining area" on an intermittent and flow variable basis via Outfalls 001 and 002; mine pit water and storm water runoff from ponds in the "post mining area" on an intermittent and flow variable basis via Outfalls 101 and 102; and the disposal of treated domestic wastewater, truck wash water, and storm water at a daily average flow not to exceed 62,000 gallons per day via evaporation. The facility is located on Farm-to-Market Road 3387, six miles east of State Highway 16 and south of the City of Christine, Atascosa and McMullen Counties, Texas.

SHELL OIL COMPANY AND DEER PARK REFINING LIMITED PARTNERSHIP, which operates a petroleum refinery, has applied for a major amendment to TPDES Permit No. WQ0000403000 to authorize the reduction of monitoring frequencies for pollutants at Outfall 007; and to remove effluent monitoring requirements for copper at Outfalls 001, 002, 004, and 009. The current permit authorizes the discharge of utility wastewaters and storm water at a daily average dry weather

flow not to exceed 2,300,000 gallons per day via Outfall 001; fire water and storm water on an intermittent and flow variable basis via Outfalls 002, 003, 004, 006, 008, 009; and treated process, sanitary, ballast, and utility wastewaters, and storm water at a daily average flow not to exceed 9.25 MGD via Outfall 007. The facility is located at 5900 State Highway 225, south of the Houston Ship Channel, west of Patrick Bayou, and north of State Highway 225 at Center Street in the City of Deer Park, Harris County, Texas.

STAN TRANS PARTNERS, L.P. which operates a bulk liquid storage terminal, has applied for a renewal of TPDES Permit No. WQ0002109000, which authorizes the discharge of storm water runoff on an intermittent and flow variable basis via Outfall 001; and process wastewater, boiler blowdown, storm water runoff, and treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day via Outfall 002. The facility is located at 201 Main Dock Road, adjacent to the Texas City Ship Channel Turning Basin in the City of Texas City, Galveston County, Texas.

SUGARTREE, INC. has applied to the Texas Commission on Environmental Quality (TCEQ) for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize additional interim phases at a daily average flow not to exceed 38,000 gallons per day and 80,000 gallons per day. The existing permit authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located approximately 1,700 feet south-southwest of the Brazos River bridge crossing on Farm-to-Market Road 1189 in Parker County, Texas.

TEXAS A&M UNIVERSITY SYSTEM which operates a marine shrimp culture (mariculture) research facility, has applied for a major amendment to TPDES Permit No. WQ0004165000 to authorize an increase in the discharge of process wastewater from a daily average flow not to exceed 10,000 gallons per day to a daily average flow not to exceed 30,000 gallons per day via Outfalls 001 and 002, due to research requirements. The current permit authorizes the discharge of process wastewater at a daily average flow not to exceed 10,000 gallons per day via Outfall 001; and process wastewater at a daily average flow not to exceed 10,000 gallons per day via Outfall 002. The facility is located on the south side of the Corpus Christi Ship Channel, approximately 1,385 feet west of the ferry landing, and approximately 250 feet east of the municipal pier, on Port Street, in the City of Port Aransas, Nueces County, Texas.

TOWN OF VAN HORN has applied for a renewal of TPDES Permit No. 14241-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 405,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 45 acres of a golf course. The facility is located approximately 1 mile southeast of the intersection of U. S. Highway 10 and U.S. Highway 90 in Culberson County, Texas.

WILLIAM SANDERS EDWARDS which operates Edwards Ranch, an aquaculture shrimp production facility, has applied for a renewal of TPDES Permit No. WQ0004166000, which authorizes the discharge of wastewater from an aquaculture facility at a daily average flow not to exceed 3,000,000 gallons per day via Outfall 001. The facility is located adjacent to the Stanolind Reservoir, on the west side of State Highway 124, six miles south of the City of Stowell, Chambers County, Texas.

TRD-200502732
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 5, 2005

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on June 29, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Khalid M. Tareen aka Muhammad Khalid Tareen dba Mr. MC's Grocery & Market; SOAH Docket No.582-04-4285; TCEQ Docket No. 2003-0673-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against v. Khalid M. Tareen aka Muhammad Khalid Tareen dba Mr. MC's Grocery & Market on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200502733
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 5, 2005

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive public comment on proposed payment rates for the Community Based Alternatives, Community Living Assistance and Support Services, Consolidated Waiver, Day Activity and Health Services, Deaf-Blind With Multiple Disabilities Waiver, Medically Dependent Children, and Primary Home Care programs operated by the Department of Aging and Disability Services. These payment rates are proposed to be effective September 1, 2005. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing will be held on August 1, 2005, at 9:30 a.m. in the Lone Star Conference Room 1047 of the Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Maria Ebenhoeh, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200. Express mail can be sent, or written comments can be hand delivered, to Ms. Ebenhoeh, HHSC Rate Analysis, MC H-400, Braker Center Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Ebenhoeh at (512) 491-1998. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Ms. Ebenhoeh by telephone at (512) 491-1352.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Ebenhoeh by mail at HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200 or by telephone at (512) 491-1358, by August 25, 2005, so that appropriate arrangements can be made.

Methodology and justification. The proposed rates were determined in accordance with the rate setting methodology codified as 1 Texas

Administrative Code Chapter 355, Subchapter A, relating to Cost Determination Process §355.101(c).

TRD-200502731
Lee Dickinson
Assistant General Counsel
Texas Health and Human Services Commission
Filed: July 5, 2005

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Public Notice Statement

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 05-002, Amendment Number 699, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to replace references to a particular time-study instrument (the Time and Financial Information report or TAFI) and replace them with more general time-study language. This will ensure that the State has flexibility in use of other time-studies, tools and data sources that continue to follow generally acceptable accounting principles in the determination of necessary and reasonable costs. Clarification is also provided regarding the consideration of the need for rebasing the rate during the rate approval process.

The anticipated effective date of the proposed amendment is April 1, 2005. The proposed amendment is expected to have no fiscal impact.

To obtain copies of the proposed amendment, interested parties may contact Lesa Ledbetter by mail at Medicaid/CHIP, Texas Health and Human Services Commission, P.O. Box 85200, Austin, Texas 78708-5200; by telephone at (512) 491-1199; by facsimile at (512) 491-1953; or by e-mail at lesa.ledbetter@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-200502726
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 1, 2005

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Department of State Health Services

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Healthsouth Diagnostic Center

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Healthsouth Diagnostic Center of Hurst (registrant--M00643-000) of Hurst. A total penalty of $12,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502723
Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 1, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Hemmo A. Bosscher, M.D., P.A.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Hemmo A. Bosscher, M.D., P.A. (unregistered) of Lubbock. A total penalty of $16,000 is proposed to be assessed the doctor for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502724
Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 1, 2005

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Providence Place II Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Fred Moore High School, 815 Cross Timbers, Denton, Texas 76205, at 6:00 p.m. on August 2, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Quail Creek South, LP, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, equipping and rehabilitating a multifamily housing development (the "Development") described as follows: 252-unit multifamily residential rental development to be located at approximately the southwest corner of Hudsonwood Drive and Stockbridge Road which is approximately 200 yards from the 3700 block of Quail Creek Road, Denton County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200502690
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 30, 2005

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Notice of Public Hearing

Multifamily Housing Revenue Bonds (Canal Place Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Houston Central Library, 500 McKinney, Houston, Harris County, Texas 77002, at 6:00 p.m. on August 1, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Wayside Luxury Housing Partners LP, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 200-unit multifamily residential rental development to be located at approximately 2104 Canal Street, Harris County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200502742
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 6, 2005

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Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by CATLIN INSURANCE COMPANY, INC., a domestic fire and/or casualty company. The home office is in Houston, Texas.

Application for incorporation to the State of Texas by DORAL DENTAL USA INSURANCE COMPANY INC., a domestic life, accident and/or health company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200502743
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: July 6, 2005

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Manufactured Housing Division

Notice of Administrative Hearing

Wednesday, July 27, 2005, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor, Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaints of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Abel Narizo DBA Abel's Wholesale Homes, to hear alleged violations of §§1201.255, 1201.303(b), 1201.357(a), 1201.358, 1201.354, and 1201.356 of the Act and §§80.54(a), 80.131(b), and 80.132(3) of the Administrative Rules by not properly installing two manufactured homes, by not complying with the initial reports and warranty orders of the Director and by not providing the Department with copies of completed work orders, in a timely manner. SOAH 332-05-7474. Department MHD2004001253-U and MHD2005000698-I.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, james.hicks@tdhca.state.tx.us

TRD-200502689
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: June 29, 2005

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Public Utility Commission of Texas

Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On June 27, 2005, KMC Telecom III, LLC filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60039C. Applicant intends to relinquish its certificate.

The Application: Application of KMC Telecom III, LLC to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 31289.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin,

Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 20, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31289.

TRD-200502688
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 2005

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on June 27, 2005, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or about July 7, 2005.

Docket Title and Number: Kerrville Telephone Company's Application for Approval of LRIC Study for Remote Call Forwarding Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 31288.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 31288. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31288.

TRD-200502687
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 2005

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on May 24, 2005, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition for Expanded Local Calling Service from the Reagan Exchange, Project Number 31130.

The petitioners in the Reagan Exchange request ELCS to the exchanges of Bremond, Chilton, Kosse, Lott and Riesel. The Reagan Exchange is located within the Waco Local Access and Transport Area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 28, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 31130.

TRD-200502741
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 2005

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Request for Proposals for the Provision of Call Center and Fulfillment Services for the Texas Electric Choice Campaign

The Public Utility Commission of Texas (commission or PUCT) is issuing a Request for Proposals (RFP) for the provision of call center and fulfillment services for the Texas Electric Choice Campaign. This RFP is being undertaken pursuant to the commission's statutory responsibility as provided for in the Public Utility Regulatory Act (PURA) §39.902(a) and (c).

To be considered, the proposals must arrive at the PUCT on or before 3:00 p.m., C.D.T., Friday, July 29, 2005. The vendor will be designated by the commission on or before August 15, 2005 and must be prepared to commence service on September 1, 2005.

Entities that meet the definition of a historically underutilized business (HUB), as defined in Chapter 2161, Texas Government Code, §2161.001, are encouraged to submit a proposal.

Project Description. This RFP contains two basic services for which a vendor is needed: (1) services necessary to set up and operate a call center to handle inbound inquiries about electric choice in Texas, including, but not limited to, all equipment, labor, programming costs, and customer service representative training, and (2) services necessary to set up and provide fulfillment of educational materials in response to customer inquiries received via telephone, mail, and the Internet. The commission will provide the vendor with the use of its toll-free 1-866-797-4839 telephone number and the Texas Electric Choice materials to be distributed to Texas customers upon request.

Selection Criteria. A proposal will be selected based on the ability of the proposer to provide the best value to the state. In addition to the proposer's ability to carry out all of the requirements contained in this RFP and demonstrated competence and qualifications of the proposer, the reasonableness of the proposed fee will be considered.

Requesting the Proposal. A complete copy of the RFP may be obtained by written request to Ben Delamater, Purchaser, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, TX 78701, or by fax (512) 936-7058, or by e-mail ben.delamater@puc.state.tx.us. You may also download the RFP from the PUC website www.puc.state.tx.us, under Hot Topics, and from the Electronic Business Daily website sponsored by the Texas Department of Economic Development at http://esbd.tbpc.state.tx.us.

Deadline for Receipt of Proposals. Proposals must be received no later than 3:00 p.m. on Friday, July 29, 2005, in the Public Utility Commission of Texas Central Records. Proposals received in Central Records after 3:00 p.m. on Friday, July 29, 2005, will not be considered. Proposals may be received in Central Records between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on holidays. In determining the time and date of receipt, the commission will rely solely on the time/date stamp of Central Records.

TRD-200502730
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 5, 2005

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Texas Office of State-Federal Relations

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and Chapter 751, Texas Government Code, the Office of State-Federal Relations (OSFR) announces the issuance of a Request for Proposals (RFP #333-0607-1000) from qualified, independent firms to provide consulting services to OSFR. The successful respondent will assist OSFR in state-federal liaison activities in Washington, D.C. OSFR reserves the right, in its sole discretion, to award one or more contracts for consulting services under this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about September 1, 2005.

Contact: Parties interested in submitting a proposal should contact David Pagan, Associate Director, 122 C Street NW, Suite 200, Washington, D.C., 20001, telephone number: (202) 638-3927, to obtain a copy of the RFP. OSFR will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, July 1st, 2005, between 3 p.m. and 6 p.m., Eastern Zone Time (EZT), and during normal business hours thereafter. OSFR also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us after 3 p.m. (EZT) on Friday, July 1st, 2005.

Questions: All questions regarding the RFP must be sent via facsimile to Mr. Pagan at: (202) 628-1943, not later than 2:00 p.m. (EZT), on Monday, July 18, 2005. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than 2:00 p.m. (EZT) on July 20, 2005, or as soon thereafter as practical.

Closing Date: Proposals must be received in at the address specified above no later than 2 p.m. (EZT), on Monday, July 25, 2005. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation based on the evaluation criteria and procedures set forth in the RFP. The consulting services sought by OSFR under the RFP relate to services previously provided by a consultant. OSFR intends to award the contract for the consulting services to a consultant that previously provided the services, unless a better offer is received. OSFR will make the final decision regarding the award of a contract or contracts. OSFR reserves the right to award one or more contracts under this RFP.

OSFR reserves the right to accept or reject any or all proposals submitted. OSFR is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. OSFR shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - Friday, July 1, 2005, 3 p.m. EZT; Questions Posted - July 20, 2005, or as soon thereafter as practical; Proposals Due - July 25, 2005, 2 p.m. EZT; Contract Execution - August 31, 2005, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2005.

TRD-200502727
David Pagan
Associate Director
Texas Office of State-Federal Relations
Filed: July 1, 2005

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Texas A&M University, Board of Regents

Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, Texas A&M University furnishes this notice of consultant contract award. The consultant will provide services for reviewing and evaluation services in the process to select software and implementation vendors for Texas A&M University. A notice for request for proposals was filed in the January 14, 2005, issue of the *Texas Register* (30 TexReg 156).

The contract was awarded to Gartner Group Inc., 12600 Gateway Blvd, Ft Myers, Florida 33913. The total dollar value of the contract will not exceed $163,900.00. The beginning date of the contract is July 1, 2005 with an ending date expected in January 2006.

Selection criteria included competence, experience, knowledge, qualifications and reasonableness of price. Proposals were received before 2:00 p.m. on February 24, 2005.

The President of Texas A&M University has affirmed the necessity of these consulting services for assistance in the vendor selection process and contract negotiations process for the EIS project.

Further information may be obtained by contacting:

Mary Sue Goldwater, CTPM, C.P.M.

Associate Director of Purchasing Services

Texas A&M University

P.O. Box 30013

College Station, Texas 77842-0013

Or email ms-goldwater@tamu.edu

TRD-200502719
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: July 1, 2005

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University of North Texas Health Science Center

Request for Information (RFI)

The University of North Texas System (UNT System) requests information from law firms interested in representing its component institution the University of North Texas Health Science Center at Fort Worth (UNTHSC) in legal issues related to its Federal correctional health care contracting. This RFI is issued to establish (for the time frame beginning June 15, 2005 to August 31, 2007) a referral list from which the UNT System, by and through its Office of Vice Chancellor and General Counsel, will select appropriate counsel for representation on specific legal issues related to its Federal correctional health care contracting as the need arises.

Description: The UNT System comprises one health institution and two academic institutions located in three cities in Texas. UNTHSC has a correctional medicine department and provides comprehensive health care services to local Federal correctional institutions. Subject to approval by the Office of the Attorney General (OAG) for the State of Texas, UNTHSC will engage outside counsel to provide advice and representation with respect to Federal procurement laws and statutes and other legal issues related to Federal correctional health care contracting. The UNT System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of UNT System's Office of Vice Chancellor and General Counsel.

Responses; Qualifications: Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services requested, including the firm's prior experience in legal issues related to Federal contracting, specifically Federal correctional health care contracting, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and Federal contracting matters in particular; (2) the names, experience, and Federal correctional health care contracting expertise of the attorneys who may be assigned to work on such matters; (3) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to UNTHSC's Federal correctional health care contracting matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UNT System, UNTHSC, or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (5) confirmation of willingness to comply with policies, directives and guidelines of the UNT System, UNTHSC and the OAG for the State of Texas.

The law firm(s) or attorney(s) will be selected based on demonstrated knowledge and experience, quality of staff assigned to perform services under the contract, compatibility with the goals and objectives of UNTHSC, and reasonableness of proposed fees. The successful firm(s) or attorney(s) will be required to sign the Texas OAG's Outside Counsel Agreement, and execution of a contract with UNTHSC is subject to approval by the Texas OAG. UNTHSC reserves the right to accept or reject any or all responses submitted. UNTHSC is not responsible for and will not reimburse any costs incurred in developing and submitting a response.

Format and Person to Contact: Two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail, facsimile, or electronic mail, or delivered in person, marked "Response to Request for Information," and addressed to William S. LeMaistre, JD, MPH, Senior Associate General Counsel, Office of the Vice Chancellor and General Counsel, UNT System, c/o UNTHSC Legal Affairs, 3500 Camp Bowie Blvd., Fort Worth, TX 76107-2699; or email wlemaist@hsc.unt.edu; or fax to (817) 735-0433.

Deadline for Submission of Response: All responses must be received by UNTHSC Legal Affairs at the address set forth above no later than August 5, 2005. Questions regarding this request may be directed to Mr. LeMaistre at (817) 735-2527.

TRD-200502728
William S. LeMaistre, JD, MPH
Senior Associate General Counsel
University of North Texas Health Science Center
Filed: July 1, 2005

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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